



CITY COUNCIL Agenda

222 NE 2nd Avenue, Canby, OR, 97013 | Ph: (503) 266-4021 | www.canbyoregon.gov

September 3, 2025

The City Council meeting may be attended in person in the Council Chambers at
222 NE 2nd Avenue, Canby, OR 97013

The meetings can be viewed on YouTube at:

<https://www.youtube.com/channel/UCn8dRr3QzZYXoPUEF4OTP-A>

The public can register to attend the meeting virtually by contacting the City Recorder;
benhamm@canbyoregon.gov or call 503-266-0720.

For questions regarding programming, please contact: Willamette Falls Studio (503) 650-0275;
media@wfmstudios.org

REGULAR MEETING – 7:00 PM

1. CALL TO ORDER

- Invocation
- Pledge of Allegiance

2. NEW EMPLOYEE INTRODUCTIONS

3. PROMOTION OF POLICE SERGEANT MURPHY TO CAPTAIN

4. SUICIDE TASK FORCE PRESENTATION

Pg. 1

- 5. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** This is an opportunity for audience members to address the City Council on items not on the agenda. If you are attending in person, please complete a testimony/comment card prior to speaking and hand it to the City Recorder. If you would like to speak virtually, please contact the City Recorder by 4:30 pm on September 3, 2025, with your name, the topic you'd like to speak on and contact information:

benhamm@canbyoregon.gov or call 503-266-0720.

6. CONSENT AGENDA

- Consider Approval of the August 6, 2025, City Council Regular Meeting Minutes.
- Consider Approval the Appointment of Member Tera Abbott to the Parks and Recreation Advisory Board with a term ending June 30, 2028.

Pg. 3

Pg. 7

7. ORDINANCES & RESOLUTIONS

- Consider **Ordinance No. 1655:** An Ordinance Adopting revisions to Chapters 16.04, *Definitions*, and 16.08, *General Provisions*, of the Canby Municipal Code related to fence standards. (*Second Reading*)

Pg. 10

- b. Consider **Ordinance No. 1656**: An Ordinance Authorizing the Interim City Administrator to Enter into a Contract with Scott Edwards Architecture LLP in the Amount of \$165,750 for the Design Development, Permitting, Bidding, and Construction Administration for the Remodel of the Canby Swim Center. (*Second Reading*) Pg. 111
- c. Consider **Resolution No. 1442**: A Resolution Authorizing the Interim City Administrator to Execute a Memorandum of Agreement with Kahut Companies Holding Incorporated. Pg. 148

8. OLD BUSINESS

- a. Letter from Parks & Recreation Advisory Board Pg. 275

9. NEW BUSINESS

10. MAYOR’S BUSINESS

11. COUNCILOR COMMENTS & LIAISON REPORTS

12. CITY ADMINISTRATOR’S BUSINESS & STAFF REPORT

13. CITIZEN INPUT

14. ACTION REVIEW

15. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Teresa Ridgley at 503-266-0637. A copy of this Agenda can be found on the City’s web page at www.canbyoregon.gov.

Suicide Myths and Facts

Myth No one can stop a suicide, it is inevitable.

Fact If people in a crisis get the help they need, they will probably never be suicidal again.

Myth Confronting a person about suicide will only make them angry and increase the risk of suicide.

Fact Asking someone directly about suicidal intent lowers anxiety, opens up communication and lowers the risk of an impulsive act.

Myth Suicidal people want to die.

Fact Suicide is perceived to be the only answer to ending their pain.

Suicide Myths and Facts

Myth Suicidal people keep their plans to themselves.

Fact Most suicidal people communicate their intent sometime during the week of preceding their attempt.

Myth Those who talk about suicide don't do it.

Fact People who talk about suicide may attempt an act of self-destruction.

Myth Once a person decides to attempt suicide, there is nothing anyone can do to stop them.

Fact Suicide is the most preventable kind of death, and almost any positive action may save a life.

How can I help? Ask the Question...

**CANBY CITY COUNCIL
REGULAR MEETING MINUTES
August 6, 2025**

PRESIDING: Brian Hodson

COUNCIL PRESENT: Traci Hensley, Paul Waterman, Daniel Stearns, Jason Padden, and Herman Maldonado.

COUNCIL ABSENT: James Davis

STAFF PRESENT: Randy Ealy, Interim City Administrator; Emily Guimont, City Attorney; Teresa Ridgley, Deputy City Recorder; Jamie Stickel, Economic Development Director/Communications Specialist; Spencer Polack, Public Works Supervisor; Don Hardy, Planning Director; Todd Wood, Fleet/Transit/IT Director; Peter Wood, Human Resources Director; Heidi Muller, Transit Operations Manager; and Ruth Reyes, Utility Billing.

CALL TO ORDER: Mayor Hodson called the meeting to order at 7:01 p.m.

NEW EMPLOYEE INTRODUCTIONS: None.

3RD COURT PRESENTATION: Don Perman spoke to Council about purchasing SE 3rd Court. He also suggested purchasing one of the two vacant lots to be used for a public parking lot/bathroom for the Logging Road accessed by SE 3rd Court. He gave a background on the road and how it had been used by the community and public agencies for years. He thought it was an adequate road for the services needed. He explained the benefits to his proposal.

There was discussion regarding who owned the road and vacant lots, suggested purchase prices, staff evaluating the proposal and bringing back a recommendation, bringing back costs to bring the road up to City standards, and concern about setting a precedent for taking over private roads.

There was consensus for staff to do research and come back with a recommendation.

STREET MAINTENANCE FEE UPDATE: Jamie Stickel, Economic Development Director, and Ruth Reyes, Utility Billing, provided a summary of the Street Maintenance Program, conflicts, revenue loss through August 31, 2025, other losses, splitting utility services, restructuring, Street Maintenance Fee increase, the proposed solution, and moving forward.

There was discussion regarding accounts that still needed to be audited, total loss amount, process for capturing new accounts, turning the Task Force into a permanent City committee, charges based on category of use, process if there was a change of use, splitting utility services, options for streamlining the process, timeline for finishing the work and getting recommendations from the Task Force, and next steps.

CITIZEN INPUT AND COMMUNITY ANNOUNCEMENTS: Carol Palmer, Heritage and Landmarks Commission Chair, shared they were working on putting historic City Hall on the National Register. She also announced winners of the DeMuro Award and discussed a letter received from the Oregon Heritage group stating they would be holding their biannual meeting in Canby this year. She discussed ideas on how to promote Canby while they were here.

CONSENT AGENDA: **Council President Hensley moved to approve the Consent Agenda including approval of the July 2, 2025, City Council Regular Meeting minutes and the approval of the appointment of Leah McCarthy to the Planning Commission with a term ending December 31, 2027. Motion was seconded by Councilor Maldonado and passed 5-0.

ORDINANCES AND RESOLUTIONS:

Ordinance 1651 – Spencer Polack, Public Works Supervisor, said the Council received the updated rendering for Auburn Farms Park.

****Councilor Waterman moved to adopt ORDINANCE 1651, AN ORDINANCE AUTHORIZING THE INTERIM CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH KONELL CONSTRUCTION & DEMOLITION CORPORATION IN THE AMOUNT OF \$2,090,927 FOR THE CONSTRUCTION OF AUBURN FARMS PARK. Motion was seconded by Councilor Maldonado and passed 5-0 by roll call vote.**

Ordinance 1652 – There was discussion regarding grants and the budget for the project.

****Councilor Padden moved to adopt ORDINANCE 1652, AN ORDINANCE AUTHORIZING THE INTERIM CITY ADMINISTRATOR TO AMEND THE CONTRACT FOR THE COMPREHENSIVE PLAN, TRANSPORTATION PLAN, AND UGB WORK WITH 3J CONSULTING. Motion was seconded by Councilor Maldonado and passed 5-0 by roll call vote.**

Ordinance 1653 – ****Council President Hensley moved to adopt ORDINANCE 1653, AN ORDINANCE AUTHORIZING THE INTERIM CITY ADMINISTRATOR TO PURCHASE ONE (1) F-250 SUPER DUTY UTILITY TRUCK FOR CANBY AREA TRANSIT FROM LANDMARK FORD AND DECLARING AN EMERGENCY. Motion was seconded by Councilor Maldonado and passed 5-0 by roll call vote.**

Ordinance 1654 – Emily Guimont, City Attorney, said the City’s bargaining team had completed negotiations and were bringing forward the bargaining agreement with AFSCME Local 350-6. She explained the process and thought this was a fair compromise for all parties concerned.

There was discussion regarding the budget impact and clarifying the overtime policy.

****Council President Hensley moved to approve ORDINANCE 1654, AN ORDINANCE AUTHORIZING THE INTERIM CITY ADMINISTRATOR TO ENTER INTO A COLLECTIVE BARGAINING AGREEMENT (CBA) BETWEEN THE CITY OF CANBY, OREGON, AND AFSCME COUNCIL 75, LOCAL 350-6 to a second reading on August 20, 2025. Motion was seconded by Councilor Padden and passed 5-0.**

OLD BUSINESS: None.

NEW BUSINESS: Civic Engagement Academy Sharing/Presentation – Ms. Stickel gave a report on the Civic Engagement Academy. She described the meetings held, lessons learned along the way, and responses on participants’ surveys. They planned to run another academy

next year.

Councilor Stearns gave his feedback on the process as a participant. Ms. Stickel discussed improvements planned for next year.

The Council thanked staff and gave suggestions for the next Academy.

MAYOR'S BUSINESS: Mayor Hodson said the Clackamas County Fair and Canby's Big Weekend were coming up. He thanked the Police Department for National Night Out.

COUNCILOR COMMENTS & LIAISON REPORTS:

Council President Hensley attended National Night Out and the Chamber Luncheon.

Councilor Padden said the Frank Cutsforth memorial signs needed to be installed for the Cruise In. He attended an elected officials farm tour. He also attended National Night Out. He had been using Canby Transit and it was an economical and smooth process.

Councilor Maldonado thanked staff for all they did.

Councilor Stearns asked about the process for a new City Administrator. Mayor Hodson said it would be a discussion in September.

Councilor Waterman said there were open positions on the Bike and Ped Committee. The Library was building a Career Center to help with workforce development. The Library Director was working on more equitable library funding. He attended National Night Out as well.

CITY ADMINISTRATOR'S BUSINESS: Randy Ealy, Interim City Administrator, thanked the community organizations that helped with National Night Out. He gave an update on power issues. He was sending a letter to DLCD and Bonneville, PGE, and Canby Utility would be coming to the Council meeting on September 17.

Councilor Padden thought the code needed to be changed to add a requirement that the assessment of the utility services for development be done earlier in the process. He also did not think data centers should be allowed in the City.

Don Hardy, Planning Director, said these could be added to other code amendments they were working on.

Mr. Ealy asked if the Council wanted a Mid-Year Budget update. They were closing out the last fiscal year and he could provide that information to Council in a month.

The Council agreed they would like data from last fiscal year to determine if there needed to be any course corrections or how things were tracking going into the next fiscal year. They also would like a mid-year meeting in January with the full Budget Committee, to get the budget document sooner before Budget Committee meetings, and receive quarterly budget updates.

Mr. Ealy suggested convening an Urban Renewal Agency meeting as soon as possible. There was consensus to meet on August 20.

CITIZEN INPUT: Greg Perez, Canby resident, spoke regarding SE 3rd Court. He did not think the City's budget would allow the purchase, especially to bring it up to City standards. It would also set a precedent for purchasing private roads.

Scott Laughlin, developer, had questions regarding the moratorium on development but he received answers from Mr. Hardy during the break.

ACTION REVIEW:

1. Approved the Consent Agenda.
2. Adopted Ordinances 1651, 1652, and 1653.
3. Approved Ordinance 1654 to a second reading on August 20, 2025.

The meeting was adjourned at 9:54 p.m.

Maya Benham, CMC
City Recorder

Brian Hodson
Mayor

Assisted with Preparation of Minutes – Susan Wood



CITY COUNCIL Staff Report

Meeting Date: 9/3/2025

To: The Honorable Mayor Hodson & City Council
Thru: Randy Ealy, Interim City Administrator
From: Maya Benham, Administrative Director/ City Recorder
Agenda Item: Consider Parks and Recreation Advisory Board Appointment
Goal: Enhance Engagement and Communications that Represent Broad Perspectives

Summary

There is currently one vacancy on the Parks and Recreation Advisory Board. The vacancies have been advertised on the City's website.

Background

The City has [11 various Boards, Commissions and Committees](#): Bike and Pedestrian Committee, Budget Committee, Canby Utility Board, Heritage and Landmark Commission, Library Board, Parks and Recreation Advisory Board, Planning Commission, Public Transit Advisory Committee, Traffic Safety Commission, Urban Renewal Agency and the Urban Renewal Budget Committee. Each Board, Commission and Committee has members that are appointed by the City Council and the term lengths are established through the Canby City Charter or the City Code.

Discussion

Chair Barry Johnson and Staff Liaison Ryan Potter interviewed Tera Abbott on Wednesday, August 20, 2025. After the interview, it was recommended Tera Abbott be appointed to the Parks and Recreation Advisory Board.

Attachments

Tera Abbott's Application

Fiscal Impact

None

Recommendation

1. Appoint Tera Abbott to the Parks and Recreation Advisory Board.
2. Take no action.

Proposed Motion

"I move to approve the appointment of Member Tera Abbott to the Parks and Recreation Advisory Board with a term ending June 30, 2028."

EMPLOYMENT APPLICATION



CITY OF CANBY
222 NE 2nd Ave
Canby, Oregon, 97013
503-266-4021
<http://www.canbyoregon.gov>

Abbott, Tera - Person ID: 63794202
2022-PRV PARKS & RECREATION ADVISORY
BOARD MEMBER

Received: 8/8/25, 9:13 PM

For Official Use Only:

QUAL: _____

DNQ: _____

☐ Experience

☐ Training

☐ Other: _____

PERSONAL INFORMATION

POSITION TITLE:

PARKS & RECREATION ADVISORY BOARD MEMBER

EXAM ID#:

2022-PRV

NAME: (Last, First, Middle)

Abbott, Tera

SOCIAL SECURITY NUMBER:

ADDRESS: (Street, City, State/Province, Zip/Postal Code)

EMAIL ADDRESS:

HOME PHONE:

NOTIFICATION PREFERENCE:

Email

PREFERENCES

Nothing Entered For This Section

EDUCATION

Nothing Entered For This Section

WORK EXPERIENCE

Nothing Entered For This Section

CERTIFICATES AND LICENSES

Nothing Entered For This Section

SKILLS

Nothing Entered For This Section

ADDITIONAL INFORMATION

Nothing Entered For This Section

REFERENCES

Nothing Entered For This Section

Job Specific Supplemental Questions

1. What are your community interests (committees, organizations, special activities)?

Love to be involved, especially when it involves my children and family. Served on Canby Community Preschool executive board for 4 years and currently president of the Eccles Elementary PTA.

2. What are your major interests or concerns in the City's programs?

We need more! We have such a great sense of community here in our small town and so many families. Fostering that sense of community through parks and possibly a parks and rec program is what we truly need!

3. Why are you interested in this volunteer position?

Being a part of the process! Bringing a young family perspective to the table :)

4. Please share your experience and educational background.

City Council Packet Page 8 of 275

Like mentioned, have been involved in both of my children's school heavily over the past 5 years. Understanding of how committee's and boards are run. Background is in early childhood education with a Bachelors from OSU; was a preschool teacher for many years as well.

5. Please list any other City or County positions on which you serve or have served.

No current or past city positions. Have attended a few Parks Advisory meetings regarding a park going in near our home. Also just completed a class put on by the city of Canby - 2025 Canby Civic Engagement Academy Cohort

6. If you were referred by someone, please list.

Was made known of this position by Barry Johnson

The following terms were accepted by the applicant upon submitting the online application:

By clicking the Accept & Submit button, I hereby certify that every statement I have made in this application is true and complete to the best of my knowledge.

Additional Information for Employment Applications:

I understand this application does not represent a contract for employment. I understand that an acceptance of an offer for employment does not create a contractual obligation upon the City of Canby to continue to employ me for any period of time in the future. I understand that no representative from the City has any authority to enter into any special agreement with me to promise and/or guarantee my employment for any specific time period or to promise me a promotion or transfer, etc. either prior to commencement of employment or after I have become employed, or to assure me of any benefits or terms and conditions of employment, or to make any agreement contrary to the aforementioned.

I hereby represent that each answer to questions incorporated into this application and all other information otherwise furnished by me shall be true, complete, and correct. I understand that incorrect, incomplete, false or misleading statement/answer/information furnished by me either verbally, or in writing will subject my application to disqualification from further consideration and/or if already employed by the City, when the aforementioned is detected, I will be subject to discipline up to and including discharge, for falsifying a City record/document, regardless of how much time has elapsed since the date I was employed. In the event that I am employed by the City, I agree to comply with all its orders, rules, regulations, safety policies, and performance standards. Upon hire, I will provide proof as required on the US Government, I-9 form that I am legally eligible for employment in the United States. If I cannot provide such proof in accordance with Federal Law, I understand that my employment will be terminated.

I have read and understand all of the provisions of this acknowledgement. By signing this application, I hold the City of Canby harmless for any result of the City questioning the references provided in this application. If I am selected for further consideration, I hereby authorize and release from liability all former employers, landlords, educational institutions, law enforcement agencies, and/or other government agencies to provide/release information regarding my employment, education, criminal conviction record, credit history, driver's license violations and motor vehicle records, which may be in their possession to the City of Canby and/or its agents. I understand that I will not receive and am not entitled to know the contents of confidential reports received, and I further understand that these reports may be privileged. An offer of employment is conditional upon a background investigation, and if relevant, a pre-employment medical exam and drug screen test (safety sensitive positions).

EQUAL EMPLOYMENT OPPORTUNITY: We are an Equal Opportunity/Affirmative Action Employer. We are dedicated to a policy of nondiscrimination in employment on the basis of race, color, religion, sex, gender identity, sexual orientation, pregnancy, status as a parent, national origin, age, or mental and/or physical disability.

BACKGROUND: Finalists for City jobs must successfully pass a background investigation and may be required to pass a pre-employment medical exam as a final condition of the job offer. Finalists for safety sensitive positions must also successfully pass a pre-employment drug-screening test.

PROBATIONARY PERIOD: New employees or employees changing job positions will be considered Trial service employees for at least six (6) months before attaining regular status.

IMMIGRATION LAW: In accordance with the Immigration Reform and Control Act of 1986 (IRCA), all newly hired employees will be required to complete and sign an Employment Eligibility Verification Form and present documentation verifying identity and employment eligibility.

This application was submitted by Tera Abbott on 8/8/25, 9:13 PM

Signature _____

Date _____



CITY COUNCIL Staff Report

Meeting Date: 9/3/2025

To: The Honorable Mayor Hodson & City Council
Thru: Randy Ealy, Interim City Administrator
From: Ryan Potter, Planning Manager
Agenda Item: Consider **Ordinance No. 1655**: an Ordinance Adopting Revisions to Chapters 16.04, *Definitions*, and 16.08, *General Provisions*, of the Canby Municipal Code Related to Fence Standards. (*Second Reading*)
Goal: Align Resources to Address Future Community Growth
Objective: Complete the Update of the City's Development Code

Summary

This is a Staff-driven request for a formal text amendment of the Canby Municipal Code (CMC). In response to community and builder concerns related to the inflexibility of the City's current fence code (CMC Sections 16.08.110, *Fences*, and 16.08.115, *Arbors*), Staff and the Planning Commission have worked together to revise and reorganize the existing code.

The proposed changes are intended to balance privacy with safety and aesthetic considerations. They were crafted under the premise that the Planning Department's planned comprehensive overhaul of the CMC (planned to begin in Winter 2025/2026) may further amend or entirely replace the code language currently under consideration.

Per the CMC, text amendments are a Type IV decision, requiring a recommendation from Planning Commission and a decision to adopt by City Council.

Background

Members of the Canby community, homeowners in particular, have increasingly expressed frustration with the development standards in the CMC that regulate fence heights and fence placement. Some of these concerns come from longstanding residents. However, the substantial residential growth that has taken place in Canby in recent years has brought a number of new homeowners and homebuilders to the community, many of whom also dislike the inflexibility of the adopted fence code. Exacerbating the issue, some homebuilders and fence contractors have chosen to ignore or disregard the fence code, putting homeowners in the tough position of owning homes with non-compliant fences and potentially facing code enforcement action.

In 2022, Planning Staff determined that the subject of residential fences needed to be revisited and decided to request direction from the Planning Commission. Because consideration of the issue had to share Staff and Commission time with other applications, projects, and planning efforts, Staff discussed residential fences with the Planning Commission incrementally over a series of six work sessions. The dates and focus of these work sessions are listed below:

- June 27, 2022 Purpose/Need, Design Principles, and Examples
- July 11, 2022 Fence Standards in Nearby Cities

- December 12, 2022 Three-Dimensional Models
- March 31, 2024 Fences on Corner Lots
- August 26, 2024 Fences in Non-Standard Conditions
- April 14, 2025 Proposed Code Language

These work sessions allowed Staff and the Planning Commission to discuss a range of interrelated issues, including urban design, neighborhood character, code enforcement, property rights, privacy, and safety. In general, the Planning Commission voiced concerns about safety—particularly related to sight distance—but also felt that the City’s fence standards for corner lots were too restrictive.

The sixth and final work session allowed the Planning Commission to review draft code language and provide final suggestions and comments.

A hearing was held on August 11, 2025, where the Planning Commission voted 5-0 to forward a recommendation of approval to the City Council. The Planning Commission voiced enthusiastic support for the proposed code amendments.

Discussion

Planning Staff request that Council consider the proposed updates to the existing fence code. Rather than completely reorganize or fully replace the existing text, the proposed updates focus on targeted edits, additions, and deletions to add clarity, reduce confusion, and adjust standards where necessary.

The Staff Report for the August 11, 2025, Planning Commission hearing (see Attachment 4) includes analysis of the text amendment’s consistency with approval criteria found in Subsection 16.88.170.D of the CMC:

D. Standards and Criteria. In judging whether or not this title should be amended or changed, the Planning Commission and City Council shall consider:

- 1. The Comprehensive Plan of the city, and the plans and policies of the county, state, and local districts, in order to preserve functions and local aspects of land conservation and development;*
- 2. A public need for the change;*
- 3. Whether the proposed change will serve the public need better than any other change which might be expected to be made;*
- 4. Whether the change will preserve and protect the health, safety and general welfare of the residents in the community;*
- 5. Statewide planning goals.*

The most significant proposed change is related to how fences may be constructed in street-facing side yards of corner lots. In line with community preferences and common practice in Canby, homeowners would be allowed to “box in” their corner lot side yards with six-foot-high fences, allowing the fenced-in portion of the backyard to reach the secondary street frontage. In the current code, fences within the street-facing side yard setbacks of corner lots may not exceed three-and-a-half feet in height.

It is worth noting that some aspects of the fence issue cannot be fully resolved by the proposed code amendments. These include the City’s overall approach to code enforcement (which warrants further discussion), the size and manner of measuring sight-distance vision triangles (which will be informed by the in-progress Transportation System Plan update), and common builder practices that artificially

restrict usable outdoor space on residential lots. However, the upcoming comprehensive update to the CMC will provide additional opportunities to discuss many of these issues.

Upon adoption of the fence code update, Planning Staff plan to produce new public-facing materials (e.g., diagrams and handouts) that will be used to help educate project applicants in implementing the updated code.

Attachments

1. Ordinance No. 1655
2. Existing Chapter 16.08, *General Provisions*, of the Zoning Code
3. Proposed Code Changes
 - a. Track Changes Version
 - b. Clean Version
4. June 23, 2025, Staff Report to Planning Commission for August 11, 2025, Hearing
5. Draft Meeting Minutes – August 11, 2025, Planning Commission Hearing
6. Presentation Slides and Memo from Planning Commission Work Sessions #1-6

Fiscal Impact

None

Options

1. Approve **Ordinance No. 1655** adopting text amendment TA 25-02 as written.
2. Approve **Ordinance No. 1655** adopting text amendment TA 25-02 with amendments.
3. Reject **Ordinance No. 1655**, directing Staff to continue implementing the existing fence code.

Recommendation

Planning Staff recommend Council adoption of text amendment TA 25-02 as written. At their regularly scheduled August 11, 2025, meeting, the Planning Commission voted 5-0 to recommend adoption of the proposed text amendment as written.

Proposed Motion

"I move to adopt **Ordinance No. 1655**: an Ordinance adopting revisions to Chapters 16.04, *Definitions*, and 16.08, *General Provisions*, of the Canby Municipal Code related to fence standards."

ORDINANCE NO. 1655

AN ORDINANCE AMENDING TITLE 16 OF THE CANBY MUNICIPAL CODE INCLUDING AMENDMENTS TO CHAPTER 16.04, DEFINITIONS, AND CHAPTER 16.08, GENERAL PROVISIONS, RELATED TO FENCE STANDARDS (TA 25-02)

WHEREAS, members of the public have voiced to City staff a need for modifications to fence standards in the Canby Municipal Code so that they better align with community values related to privacy, safety, usability of open space, and neighborhood character;

WHEREAS, City Council have formally identified a Council goal to update the City's development code and have informally expressed a desire for staff to add clarity and flexibility to fence-related and other development standards that affect neighborhood design and character;

WHEREAS, City staff held six duly-noticed work sessions with the Planning Commission to discuss fence code issues and potential code amendments;

WHEREAS, City staff proposed legislative text amendments to the Canby Municipal Code amending portions of Chapter 16.04, Definitions, and Chapter 16.08, General Provisions, consistent with discussions between City staff and the Planning Commission;

WHEREAS, a staff report with appropriate findings has been prepared showing consistency of the Fence Code Update with the Canby Comprehensive Plan, Canby Municipal Code, and Statewide planning goals;

WHEREAS, at a duly-noticed public hearing on August 11, 2025, the Planning Commission found that the standards and criteria of Section 16.88.170 of the Land Development and Planning Ordinance concerning text amendments were met, and forwarded a recommendation of approval to the City Council on a 5-0 vote; and

WHEREAS, the City Council, after reviewing the record of the Canby Planning Commission regarding the proposed amendments, concluded that the Planning Commission's recommendation is appropriate as recommended.

NOW, THEREFORE, THE CANBY CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. The City of Canby City Council hereby adopts the proposed Fence Code Update (City File TA 25-02) and amends the Canby Municipal Code as described in Exhibit A, which is attached to this ordinance and is incorporated by reference.

SUBMITTED the Canby City Council and read the first time at a regular meeting therefore on Wednesday, August 20, 2025 ordered posted as required by the Canby City Charter; and scheduled for second reading on Wednesday, September 3, 2025 commencing at the hour of 7:00 PM in the Council Chambers located at 222 NE 2nd Avenue, First Floor, Canby, Oregon.

Maya Benham, CMC
City Recorder

PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on September 3, 2025, by the following vote:

YEAS _____ NAYS _____

Brian Hodson
Mayor

ATTEST:

Maya Benham, CMC
City Recorder

DIVISION III. – ZONING

Chapter 16.08 GENERAL PROVISIONS

Sections:

- 16.08.010 Compliance with title.**
- 16.08.020 Zoning map.**
- 16.08.030 Zone boundaries.**
- 16.08.040 Zoning of annexed areas.**
- 16.08.050 Prohibited parking.**
- 16.08.070 Illegally created lots.**
- 16.08.080 Area and yard reductions.**
- 16.08.090 Sidewalks required.**
- 16.08.100 Height allowances.**
- 16.08.110 Fences.**
- 16.08.115 Arbors.**
- 16.08.130 Standard transportation improvements.**
- 16.08.140 Temporary vendor.**
- 16.08.150 Mobile Food Vendor.**
- 16.08.160 Traffic Impact Study (TIS).**
- 16.08.170 Safety and Functionality Standard.**

16.08.010 Compliance with title.

No building, structure, or land shall hereafter be used or occupied, and no building, structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered contrary to the provisions of this title. No lot area, yard, or required off-street parking or loading area existing on or after the effective date of the ordinance codified in this title shall be reduced in area, dimension, or size below the minimums required by this title, nor shall any lot area, yard, or required off-street parking or loading area that is required by this title for one use be used to satisfy the lot area, yard, off-street parking or loading area requirement for any other use, except as may be provided in this title. (Ord. 740 section 10.3.05(A), 1984)

16.08.020 Zoning map.

- A.** The location and boundaries of the zones designated in this division are established as shown on the map entitled “Zoning Map of the City of Canby” dated with the effective date of the ordinance codified in this title and signed by the Mayor and the city recorder and hereafter referred to as the zoning map.
- B.** The signed copy of the zoning map shall be maintained on file in the office of the city recorder and is made a part of this title. (Ord. 740 section 10.3.05(B), 1984)

16.08.030 Zone boundaries.

Unless otherwise specified, zone boundaries are lot lines or the centerline of streets, railroad rights-of-way, or such lines extended. Where a zone boundary divides a lot into two or more zones, the entire lot shall be considered to be in the zone containing the greater lot area, provided the boundary adjustment is a distance of less than twenty feet. (Ord. 740 section 10.3.05(C), (1984))

16.08.040 Zoning of annexed areas.

Zoning of newly annexed areas shall be considered by the Planning Commission in its review and by the Council in conducting its public hearing for the annexation. (Ord. 740 section 10.3.05(D), 1984)(Ord. 1294, 2008)

16.08.050 Prohibited parking.

In addition to the provisions of the motor vehicle laws of Oregon regulating parking, no person shall park any vehicle, except an automobile, motorcycle, van or pickup truck rated no larger than one ton, on any public street or alley within any residential zone, except for an emergency or for the purpose of loading or unloading. (Ord. 740 section 10.3.05(E), 1984)

16.08.060

(Ord. 740 section 10.3.05(F), 1984; renumbered as 16.64.040(I)(6) by Ord. 1043 section 3, 2000)

16.08.070 Illegally created lots.

In no case shall a lot which has been created in violation of state statute or city ordinance be considered as a lot of record for development purposes, until such violation has been legally remedied. (Ord. 740 section 10.3.05(G), 1984)

16.08.080 Area and yard reductions.

- A.** When there are existing dwellings on the lots situated immediately to each side of a given lot and each of those neighboring lots has less than the required street yard depth, the street yard of the subject property may be reduced to the average street yard of those two abutting lots.
- B.** When there is an existing dwelling situated on a lot immediately to either side of a given lot which fronts on the same street, and such existing dwelling has a street yard which is less than half of that required in the zone, the street yard of the subject property may be reduced to a depth which is halfway between that normally required in the zone and that of the existing dwelling on the neighboring lot.
- C.** If, on the effective date of the ordinance codified in this title, a lot or the aggregate of contiguous lots held in a single ownership has less than the required area or width, the lot or lots may be occupied by a permitted use subject to the other requirements of the zone; provided that if the deficiency is one of area, residential uses shall be limited to single-family dwellings; and further provided that if the deficiency is one of width, each required interior yard may be reduced by one foot for each four feet of deficient width. In no case, however, shall such reduction result in an interior yard of less than five feet.

- D. Where two or more contiguous substandard recorded lots are in common ownership and are of such size to constitute at least one conforming zoning lot, such lots or portions thereof shall be so joined, developed, and used for the purpose of forming an effective and conforming lot or lots. Such contiguous substandard lots in common ownership shall be considered as being maintained in common ownership after the effective date of the ordinance codified in this title for zoning purposes. (Ord. 740 section 10.3.05(H), 1984; Ord. 1237, 2007)

16.08.090 Sidewalks required.

- A. In all commercially zoned areas, the construction of sidewalks and curbs (with appropriate ramps for the handicapped on each corner lot) shall be required as a condition of the issuance of a building permit for new construction or substantial remodeling, where such work is estimated to exceed a valuation of twenty thousand dollars, as determined by the building code. Where multiple permits are issued for construction on the same site, this requirement shall be imposed when the total valuation exceeds twenty thousand dollars in any calendar year.
- B. The Planning Commission may impose appropriate sidewalk and curbing requirements as a condition of approving any discretionary application it reviews. (Ord. 740 section 10.3.05(I), 1984)

16.08.100 Height allowances.

The following types of structures or structural posts are not subject to the building height limitations: chimneys, cupolas, tanks, church spires, belfries, derricks, fire and hose towers, flagpoles, water tanks, elevators, windmills, utility poles and other similar projections. The height of wireless telecommunications systems facilities shall be in accordance with section 16.08.120. (Ord. 740 section 10.3.05(J), 1984; Ord. 981 section 18, 1997)

16.08.110 Fences.

- A. Fences not more than three and one-half feet in height may be constructed within the street setbacks of any R-1, R-1.5, R-2 or C-1 zone. Fences not more than six feet in height may be constructed in any interior yard, rear yard, or street yard along an alley; provided, however, that in no case shall a fence be constructed in violation of the requirements of a vision clearance area.
- B. On corner lots, the 3.5-foot height limit will apply within the required setback along both street-facing yards.
- C. No more than one row of fencing is allowed within a required street yard setback.
- D. The Planning Commission may require sight-blocking or noise mitigating fences for any development it reviews.
- E. Fences of up to eight feet in height are permitted for any development in C-2, C-M, M-1 or M-2, or Planned Unit Development zones.
- F. No fence/wall shall be constructed throughout a subdivision, planned unit development or be part of a project that is/was subject to site and design review

approval where the effect or purpose is to wall said project off from the rest of the community unless reviewed and approved by the Planning Commission. (Ord. 890 section 8, 1993; Ord. 740 section 10.3.05(K), 1984; Ord. 955 section 2, 1996; Ord. 981 section 43, 1997)

- G.** In all zones, private fences along a public pedestrian/bicycle pathway shall comply with the following in order to provide security and visibility for pathway users while maintaining privacy for the residence.
1. Fencing installed as part of a new subdivision shall comply with either (a) or (b) below.
 2. Fencing installed by a property owner on an individual lot shall comply with either (a), (b), or (c) below.
 - a. Solid fencing shall be no greater than four (4) feet in height; or
 - b. Fencing shall be constructed with black open wire material, wooden slats, or some other material that allows visual access between the pathway and adjacent uses; or
 - c. Solid fencing shall be set back at least three (3) feet from the property line that abuts the pathway.

H. Use of hazardous materials.

Fences and walls shall not be constructed of or contain any material which will do bodily harm, such as electric or barbed wire, razor wire, broken glass, spikes, or any other hazardous or dangerous material, except as follows:

- a. Barbed wire or electrified fences enclosing livestock are permitted in any zone permitting farm use. Electrified fences shall be posted or flagged at not less than 25-foot intervals with clearly visible warnings of the hazard when adjacent to developed areas.
- b. In commercial and industrial zones barbed wire is permitted attached to the top of a fence that is at least six foot in height above grade; provided, that barbed wire shall not extend over a street, sidewalk, alley or roadway. The attached barbed wire shall be placed at least six inches above the top of the fence. (Ord. 890 section 8, 1993; Ord. 740 section 10.3.05(K), 1984; Ord. 955 section 2, 1996; Ord. 981 section 43, 1997; Ord. 1338, 2010; Ord. 1514, 2019)

16.08.115 Arbors

A. Arbors that are constructed of proper design (height and setbacks) and in accordance with, the design standards of the particular zone where it is located are allowed with the following limitations:

1. Arbors shall be stand-alone structures and shall not be attached to a fence.
2. The arbor shall not exceed eight feet in height and shall maintain a five foot setback from the property line.
3. If the vegetation becomes too full or too high, the owner is financially responsible to rectify the situation, and to maintain the vegetation, and arbor;
4. The primary purpose of the arbor is to support and sustain foliage/vegetation, provide shade, recreational space, and ascetic amenity. (Ord. 1514, 2019)

16.08.130 Standard transportation improvements.

A. Pursuant to the Transportation Planning Rule, projects that are specifically identified in the Canby Transportation System Plan, for which the City has made all the required land use and goal compliance findings, are permitted outright and subject only to the standards established by the Transportation System Plan. This section pertains to additional transportation projects that may not be identified in the Canby Transportation System Plan, and whether the use is permitted outright or permitted subject to the issuance of a conditional use permit.

1. Except where otherwise specifically regulated by this ordinance, the following improvements are permitted outright:
 - a. Normal operation, maintenance, repair, and preservation of existing transportation facilities.
 - b. Installation of culverts, pathways, medians, fencing, guardrails, lighting, and similar types of improvements within the existing right-of-way.
 - c. Projects specifically identified in the Transportation System Plan as not requiring further land use regulation.
 - d. Landscaping as part of a transportation facility.
 - e. Emergency measures necessary for safety and the protection of property.

- f. Acquisition of right-of-way for public roads, highways, and other transportation improvements designated in the Transportation System Plan, except for those that are located in exclusive farm use or forest zones.
 - g. Construction of a local street or road as part of subdivision or land partition approved consistent with this Ordinance.
- 2. Except where otherwise specifically regulated by this ordinance, the following improvements are permitted as a conditional use:
 - a. Construction, reconstruction, or widening, and other projects authorized by the Transportation System Plan but not included in the list of projects in the Transportation System Plan. These projects shall comply with the Transportation System Plan and applicable standards, and shall address the following criteria. For State projects that require an Environmental Impact Statement (EIS) or Environmental Assessment (EA), the draft EIS or EA shall be reviewed and used as the basis for findings to comply with the following criteria:
 - i. The project is designed to be compatible with existing land use and social patterns, including noise generation, safety, and zoning.
 - ii. The project is designed to minimize avoidable environmental impacts to identified wetlands, wildlife habitat, air and water quality, cultural resources, and scenic qualities.
 - iii. The project preserves or improves the safety and function of the facility through access management, traffic calming, or other design features.
 - iv. The project includes provision for bicycle and pedestrian circulation as consistent with the Comprehensive Plan and other requirements of this ordinance.
 - b. If review under this section indicates that the use or activity is not clearly authorized by the Transportation System Plan or this ordinance, a plan amendment shall be undertaken prior to or in conjunction with the conditional use permit review. (Ord. 1043 Section 3, 2000)

16.08.140 Temporary vendor.

Any person who exhibits goods or services for sale or for offer in a temporary manner on private property, from a vehicle, trailer, tent, canopy, shipping container, or other temporary structure, or from one's person or displayed on the ground or off the ground, shall first obtain permit approval in compliance with the following standards, and shall operate in compliance with this section and with all other applicable sections of the Canby Municipal Code.

- A. Exemptions.** The following temporary activities do not require a Temporary Vendor permit, and are exempt from the standards in this section:

1. Any person engaged in the mere delivery of any goods or services to a site, which were purchased from a regular place of business inside or outside the city;
2. Any person engaged in delivery, exhibition, sale or offering of food on a site for a period of time not to exceed 2 hours during any 24 hour period;
3. Any contractor who is engaged in constructing, maintaining, or repairing a structure, utility, equipment, or landscaping on a site; or
4. Any person conducting a garage sale per Section 5.04.020.

B. Permit process.

1. A request for a Temporary Vendor permit shall be processed as a Type I decision pursuant to the procedures set forth in Chapter 16.89. A Temporary Vendor permit applicant shall demonstrate that the proposed activity meets all fire and life safety codes, and is in compliance with this section and with all other applicable sections of the Canby Municipal Code.
2. An application for a Temporary Vendor permit shall include a site plan drawn to scale, which includes all existing lot lines, setbacks, structures, landscaped areas, paved areas, and parking and loading spaces; and illustrates the proposed location and layout of all the Temporary Vendor's structures, equipment, furnishings, signage, and inventory.
3. The Temporary Vendor activity (e.g., retail, restaurant, etc) shall be an outright permitted use in the zoning district in which it is located; Or if the use is conditionally permitted in the zoning district, a Conditional Use Permit approval shall be required prior to issuance of a Temporary Vendor permit.
4. A "Site and Design Review" permit is not required for a permitted Temporary Vendor.
5. Any signage displayed by the Temporary Vendor must be in compliance with Chapter 16.42 sign standards, and all required Sign permits must be obtained.
6. A Temporary Vendor must obtain a City of Canby business license.

- C. Duration.** A Temporary Vendor permit may be granted for a site for up to 90 consecutive calendar days, and then may be renewed twice upon request for an additional 90 days, provided that the temporary vendor activity has been conducted in compliance with all applicable codes, and no public safety incidents have occurred on the site related to the temporary vendor activity. In no case shall a site be permitted to host Temporary Vendor activity for more than 270 days in any 12 month period.

- D. A Temporary Vendor shall be located on a paved surface with adequate vehicular and pedestrian ingress and egress, in compliance with Section 16.10.070. Inventory and equipment shall not be displayed or stored in any landscaped areas.
- E. A Temporary Vendor shall comply with all required development standards, such as height limitations, setbacks, vision clearance areas, and applicable conditions of any previous land use decisions for the site.
- F. Equipment such as trash cans, fuel tanks, or generators shall be screened such that it is not visible from any abutting public right-of-way.
- G. A Temporary Vendor shall not displace any vehicle parking spaces that are required to meet the minimum off-street parking requirements of another use on site or on a nearby site. A Temporary Vendor shall not encroach into required loading space areas, driveways, or vehicle maneuvering areas.
- H. A Temporary Vendor that displaces one or more vehicle parking spaces is prohibited for any site that:
 - 1. Is non-conforming in terms of meeting minimum required vehicle parking or loading space requirements; or
 - 2. Has been granted a vehicle parking exception, and currently has less than the required minimum number of off-street vehicle parking spaces.
- I. The property owner and the temporary vendor permit holder shall be jointly and separately responsible for any violation of this section or other applicable sections of the Canby Municipal Code. Any such violation may result in the immediate revocation or non-renewal of a temporary vendor permit, and may result in the denial of any future temporary vendor permit for the site upon which the violation occurred. (Ord 1315, 2009; Ord. 1520, 2019)

16.08.150 Mobile Food Vendor

- A. Permit process.
 - 1. A request for a Mobile Food Vendor permit shall be processed as a Type I decision pursuant to the procedures set forth in Chapter 16.89. A Mobile Food Vendor permit applicant shall demonstrate that the proposed activity meets all fire and life safety codes, and is in compliance with this section and with all other applicable sections of the Canby Municipal Code.
 - 2. An application for a Mobile Food Vendor permit shall include a site plan drawn to scale, which includes all existing lot lines, setbacks, structures, landscaped areas, paved areas, and parking and loading spaces; and illustrates the proposed location and layout of all the Mobile Food Vendor's structures, equipment, furnishings, signage, and inventory.

3. The Mobile Food Vendor activity (e.g., retail, restaurant, etc.) shall be an outright permitted use in the zoning district in which it is located; or if the use is conditionally permitted in the zoning district, a Conditional Use Permit approval shall be required prior to issuance of a Mobile Food Vendor permit.
 4. The Mobile Food Vending unit shall not require connection to public utilities that do not already exist on site and can be provided by the property owner/manager.
 5. A "Site and Design Review" permit is not required for a permitted Mobile Food Vendor.
 6. Any signage displayed by the Mobile Food Vendor must be in compliance with Chapter 16.42 sign standards, and all required Sign permits must be obtained.
 7. A Mobile Food Vendor must obtain a City of Canby business license.
- B.** Duration. A Mobile Food Vendor permit may be granted for a site for up to 6 months, and then may be renewed upon request for an additional 1 year, provided that the Mobile Food vendor activity has been conducted in compliance with all applicable codes, and no public safety incidents have occurred on the site related to the Mobile Food vendor activity.
- C.** A Mobile Food Vendor shall be located on a paved surface with adequate vehicular and pedestrian ingress and egress, in compliance with Section 16.10.070. Inventory and equipment shall not be displayed or stored in any landscaped areas.
- D.** A Mobile Food Vendor shall comply with all required development standards, such as height limitations, setbacks, vision clearance areas, and applicable conditions of any previous land use decisions for the site as well as the development standards of the zone.
- E.** Equipment such as trash cans, fuel tanks, or generators shall be screened such that it is not visible from any abutting public right-of-way. Portable amenities shall be packed inside the mobile food unit or screened from public view when the business is not in operation. This includes but is not limited to: weather protection elements, seating, tables, trash cans, and signage.
- F.** A Mobile Food Vendor shall not displace any vehicle parking spaces that are required to meet the minimum off-street parking requirements of another use on site or on a nearby site. A Mobile Food Vendor shall not encroach into required loading space areas, driveways, or vehicle maneuvering areas.
- G.** A Mobile Food Vendor that displaces one or more vehicle parking spaces is prohibited for any site that:
1. Is non-conforming in terms of meeting minimum required vehicle parking or loading space requirements; or
 2. Has been granted a vehicle parking exception, and currently has less than the required minimum number of off-street vehicle parking spaces.

- H. The property owner and the vendor permit holder shall be jointly and severally responsible for any violation of this section or other applicable sections of the Canby Municipal Code. Any such violation may result in the immediate revocation or non-renewal of a Mobile Food vendor permit, and may result in the denial of any future Mobile Food vendor permit for the site upon which the violation occurred. (Ord. 1570, 2022)

16.08.160 Traffic Impact Study (TIS).

- A. **Purpose.** The purpose of this section of the code is to implement Section 660-012-0045(2)(b) of the State Transportation Planning Rule, which requires the city to adopt a process to apply conditions to development proposals in order to minimize adverse impacts to and protect transportation facilities. This section establishes the standards to determine when a proposal must be reviewed for potential traffic impacts; when a Traffic Impact Study must be submitted with a development application in order to determine whether conditions are needed to minimize impacts to and protect transportation facilities: what information must be included in a Traffic Impact Study; and who is qualified to prepare the Study.
- B. **Initial scoping.** During the pre-application conference, the city will review existing transportation data to determine whether a proposed development will have impacts on the transportation system. It is the responsibility of the applicant to provide enough detailed information for the city to make a determination. If the city cannot properly evaluate a proposed development's impacts without a more detailed study, a transportation impact study (TIS) will be required to evaluate the adequacy of the transportation system to serve the proposed development and determine proportionate mitigation of impacts. If a TIS is required, the city will provide the applicant with a "scoping checklist" to be used when preparing the TIS.
- C. **Determination.** Based on information provided by the applicant about the proposed development, the city will determine when a TIS is required and will consider the following when making that determination.
1. Changes in land use designation, zoning designation, or development standard.
 2. Changes in use or intensity of use.
 3. Projected increase in trip generation.
 4. Potential impacts to residential areas and local streets.
 5. Potential impacts to priority pedestrian and bicycle routes, including, but not limited to school routes and multimodal street improvements identified in the TSP.
 6. Potential impacts to intersection level of service (LOS).

D. TIS General Provisions

1. All transportation impact studies, including neighborhood through-trip and access studies, shall be prepared and certified by a registered Traffic or Civil Engineer in the State of Oregon.
2. Prior to TIS scope preparation and review, the applicant shall pay to the city the fees and deposits associated with TIS scope preparation and review in accordance with the adopted fee schedule. The city's costs associated with TIS scope preparation and review will be charged against the respective deposits. Additional funds may be required if actual costs exceed deposit amounts. Any unused deposit funds will be refunded to the applicant upon final billing.
3. For preparation of the TIS, the applicant may choose one of the following:
 - a. The applicant may hire a registered Oregon Traffic or Civil Engineer to prepare the TIS for submittal to the city. The city Traffic Engineer will then review the TIS and the applicant will be required to pay to the city any fees associated with the TIS review; or
 - b. The applicant may request that the city Traffic Engineer prepare the TIS. The applicant will pay to the city any fees associated with preparation of the TIS by the city Traffic Engineer.
4. The TIS shall be submitted with a concurrent land use application and associated with application materials. The city will not accept a land use application for process if it does not include the required TIS.
5. The city may require a TIS review conference with the applicant to discuss the information provided in the TIS once it is complete. This conference would be in addition to any required pre-application conference. If such a conference is required, the city will not accept the land use application for processing until the conference has taken place. The applicant shall pay the TIS review conference fee at the time of conference scheduling, in accordance with the adopted fee schedule.
6. A TIS determination is not a land use action and may not be appealed.

E. TIS Scope. The city shall determine the study area, study intersections, trip rates, traffic distribution, and required content of the TIS based on information provided by the applicant about the proposed development.

1. The study area will generally comprise an area within a ½-mile radius of the development site. If the city determines that development impacts may extend more than ½ mile from the development site, a larger study area may be required. Required study intersections will generally include (in addition to the primary access points) collector/collector and above intersections with an anticipated peak hour traffic increase of five-percent from the proposed project.

CITY OF CANBY

July 2022

Chapter 16.08 - Page 11

City Council Packet Page 25 of 275

2. If notice to ODOT or other agency is required pursuant to noticing requirements in Chapter 16.89, the city will coordinate with those agencies to provide a comprehensive TIS scope. ODOT may also require a TIS directly to support an OR 99E approach permit application.
- F. TIS Content.** A project-specific TIS checklist will be provided to the applicant by the city once the city has determined the TIS scope. A TIS shall include all of the following elements, unless waived by the city.
1. Introduction and Summary. This section shall include existing and projected trip generation including vehicular trips and mitigation of approved development not built to date; existing level and proposed level of service standard for city and county streets and volume to capacity for state roads; project build year and average growth in traffic between traffic count year and build year; summary of transportation operations; traffic queuing and delays at study area intersections; and proposed mitigation(s).
 2. Existing Conditions. This section shall include a study area description, including information about existing study intersection level of service.
 3. Impacts. This section should include the proposed site plan, evaluation of the proposed site plan, and a project-related trip analysis. A figure showing the assumed future year roadway network (number and type of lanes at each intersection) also shall be provided. For subdivision and other developments, the future analysis shall be for the year of proposed site build-out. For proposed comprehensive plan and/or zoning map amendments, the future analysis year shall be 20 years from the date of the City's adopted TSP, or 15 years, whichever is greater.
 4. Mitigation. This section shall include proposed site and area-wide specific mitigation measures. Mitigation measures shall be roughly proportional to potential impacts. See Subsection K below for rough proportionality determination.
 5. Appendix. This section shall include traffic counts, capacity calculations, warrant analysis, and any other information necessary to convey a complete understanding of the technical adequacy of the TIS.
- G. TIS Methodology.** The City will include the required TIS methodology with the TIS scope.

H. Neighborhood Through-Trip Study. Any development projected to add more than 30 through-vehicles in a peak hour or 300 through-vehicle per day to an adjacent residential local street or neighborhood route will be require assessment and mitigation of residential street impacts. Through-trips are defined as those to and from a proposed development that have neither an origin nor a destination in the neighborhood. The through-trip study may be required as a component of the TIS or may be a stand-alone study, depending on the level of study required in the scoping checklist. The through-trip study shall include all of the following:

1. Existing number of through-trips per day on adjacent residential local streets or neighborhood routes.
2. Projected number of through-trips per day on adjacent residential local streets or neighborhood routes that will be added by the proposed development.
3. Traffic management strategies to mitigate for the impacts of projected through-trip consistent.

If a residential street is significantly impacted, mitigation shall be required. Thresholds used to determine if residential streets are significantly impacted are:

1. Local residential street volumes should not increase above 1,200 average daily trips
2. Local residential street speeds should not exceed 28 miles per hour (85th percentile speed).

I. Mitigation. Transportation impacts shall be mitigated at the time of development when the TIS identifies an increase in demand for vehicular, pedestrian, bicycle, or transit transportation facilities within the study area. Mitigation measures may be suggested by the applicant or recommended by ODOT or Clackamas County in circumstances where a state or county facility will be impacted by a proposed development. The city shall determine if the proposed mitigation measures are adequate and feasible. ODOT must be consulted to determine if improvements proposed for OR 99E comply with ODOT standards and are supported by ODOT. The following measures may be used to meet mitigation requirements:

1. On-and off-site improvements beyond required standard frontage improvements.
2. Development of a transportation demand management program.
3. Payment of a fee in lieu of construction, if construction is not feasible.
4. Correction of off-site transportation deficiencies within the study area that are substantially exacerbated by development impacts.

5. Construction of on-site facilities or facilities located within the right-of-way adjoining the development site that exceed minimum required standards and that have a transportation benefit to the public.
- J. Conditions of Approval.** The city may deny, approve, or approve with appropriate conditions a development proposal in order to minimize impacts and protect transportation facilities.
1. Where the existing transportation system will be impacted by the proposed development, dedication of land for streets, transit facilities, sidewalks, bikeways, paths, or accessways may be required to ensure that the transportation system is adequate to handle the additional burden caused by the proposed use.
 2. Where the existing transportation system is shown to be burdened by the proposed use, improvements such as paving, curbing, installation or contribution to traffic signals, traffic channelization, construction of sidewalks, bikeways, accessways, paths, or street that serve the proposed use may be required.
 3. The city may require the development to grant a cross-over access easement(s) to adjacent parcel(s) to address access spacing standards on arterials and collector roadways or site-specific safety concerns. Construction of shared access may be required at the time of development if feasible, given existing adjacent land use. The access easement must be established by deed.
- K. Rough Proportionality Determination.** Improvements to mitigate impacts identified in the TIS shall be provided in rough proportion to the transportation impacts of the proposed development.
1. The TIS shall include information regarding how the proportional share of improvements was calculated, using the ratio of development trips to growth trips and the anticipated cost of the full Canby Transportation System Plan. The calculation is provided below:

$$\text{Proportionate Share Contribution} = [\text{Net New Trips} / (\text{Planning Period Trips} - \text{Existing Trips})] \times \text{Estimated Construction Cost}.$$
 - a. Net new trips means the estimated number of new trips that will be created by the proposed development within the study area.
 - b. Planning period trips means the estimated number of total trips within the study area within the planning period identified in the TSP.
 - c. Existing trips means the estimated number of existing trips within the study area at the time of TIS preparation.
 - d. Estimated construction cost means the estimated total cost of construction of identified improvements in the TSP. (Ord 1340, 2011)

16.08.170 Safety and Functionality Standards.

The City will not issue any development permits unless the proposed development complies with the city's basic transportation safety and functionality standards, the purpose of which is to ensure that development does not occur in areas where the surrounding public facilities are inadequate. Upon submission of a development permit application, an applicant shall demonstrate that the development property has or will have the following:

- A.** Adequate street drainage, as determined by the city.
- B.** Safe access and clear vision at intersections, as determined by the city.
- C.** Adequate public utilities, as determined by the city.
- D.** Access onto a public street with the minimum paved widths as stated in Subsection E below.
- E.** Adequate frontage improvements as follows:
 - 1.** For local streets and neighborhood connectors, a minimum paved width of 16 feet along the site's frontage.
 - 2.** For collector and arterial streets, a minimum paved width of 20 feet along the site's frontage.
 - 3.** For all streets, a minimum horizontal right-of-way clearance of 20 feet along the site's frontage.
- F.** Compliance with mobility standards identified in the TSP. If a mobility deficiency already exists, the development shall not create further deficiencies. (Ord 1340, 2011)

TA 25-02: Proposed Code Changes – Track Changes Version

The following is the existing Canby code under Subsections Fences 16.08.110 and Arbors 16.08.115 with additions in **bold underlined**, deletions in ~~double-strikeout~~, and Staff comments in *italics* after each proposed edit. Highlighted text is related to discussions between Planning Staff and the Planning Commission during Work Session #6 or other new edits.

16.08.110 Fences.

The City's fence code is intended to balance privacy with safety and aesthetic considerations.

Staff Comment: This addition is meant to establish the foundational principle of the fence code.

- A. **In no case shall a fence be constructed in the vision clearance triangle of a street, alley, or pedestrian/bicycle pathway. This applies in all zones and in all lot configurations and supersedes all permitted fence heights identified in the subsections below. As defined in Chapter 16.04, vision clearance triangles must be free of obstructions between two and one-half feet and ten feet in height.**

Staff Comment: This was added up front to emphasize that the vision clearance concept applies everywhere, which is something Planning Commission advocated for in their feedback. Highlighted text was added per comments by Commissioner Driskill.

- B. Fences not more than three and one-half feet in height may be constructed within the **front** street setbacks of any R-1, R-1.5, R-2, **C-R**, or C-1 zone. Fences not more than six feet in height may be constructed in any interior yard, rear yard, or ~~street yard~~ along an alley; ~~provided, however, that in no case shall a fence be constructed in violation of the requirements of a vision clearance area.~~

Staff Comment: This was reworded consistent with our proposal to be more permissive in street-adjacent side yards (see (C) below). The vision clearance language was moved to its own provision (see (A) above).

- C. On corner lots, **fences may be constructed up to six feet in height along the secondary street frontage in the side yard setback (i.e., in the street-adjacent side yard), except where the side setback overlaps the lot's front setback. As with all fences within the front setback, fences that continue into the front setback must then step down to a maximum of three and a half feet.** ~~the 3.5-foot height limit will apply within the required setback along both street-facing yards.~~

Staff Comment: This provision was the primary driver for us changing the fence code. Due to homeowner feedback, we are proposing to allow six-foot fences to wrap around into the street-adjacent side yard on corner lots, up to the front yard setback. This allows people to "box in" their back yards more easily. Right now, the fence either has to be low or pushed back to the setback line near the main structure.

- D. **On lots where a rear yard abuts a public street or alley (such as "through lots" as defined in Chapter 16.04), rear yard fences may be constructed up to six feet in height.**

Staff Comment: This new bullet aims to address a condition for which the existing code is silent. In practice, most new subdivisions already place full-height fences along rear yards where they back onto streets (e.g., at the edge of new neighborhoods).

~~E. No more than one row of fencing is allowed within a required street yard setback.~~

Staff Comment: Planning Staff and the Planning Commission agreed that there is no compelling reason to prohibit parallel rows of fencing. In many cases, two homeowners have their own adjacent back-to-back fences.

- F. The Planning Commission may require sight-blocking or noise mitigating fences for any development it reviews. **Any such requirement shall be tied to a specific adverse impact caused by the project (including impacts related to land use compatibility) and not required purely for aesthetic reasons.**

Staff Comment: Language was added to this provision to add clarity and purpose. Added text in highlights was added per comments by Commissioners Driskill and Jarosh.

Fences of up to eight feet in height are permitted for any development in C-2, C-M, M-1 or M-2, ~~or Planned Unit Development zones,~~ **including property lines where residential uses abut these zones.**

Staff Comment: Planning Unit Developments were removed from this provision since PUDs are often residential neighborhoods, where eight-foot fences are not appropriate. A PUD could propose specific fence heights and include them in the land use approval for the PUD. Added text in highlights was added per comments by Commissioners Driskill and Hutchinson.

- G. No fence/wall shall be constructed throughout a subdivision, planned unit development or be part of a project that is/was subject to site and design review approval where the effect or purpose is to wall said project off from the rest of the community unless reviewed and approved by the Planning Commission. (Ord. 890 section 8, 1993; Ord. 740 section 10.3.05(K), 1984; Ord. 955 section 2, 1996; Ord. 981 section 43, 1997)
- H. ~~In all R-1, R-1.5, R-2, C-R, and C-1 zones, private fences along a public pedestrian/bicycle pathway~~ **may be constructed up to six feet in height, except within a 20-foot setback along the street where they must step down to no more than three and one-half feet, as with other fences in those zones. In the C-2, C-M, M-1, and M-2 zones, private fences along public pedestrian pathways may be constructed up to eight feet but may not conflict with vision clearance requirements.** ~~shall comply with the following in order to provide security and visibility for pathway users while maintaining privacy for the residence:~~
- ~~1. Fencing installed as part of a new subdivision shall comply with either (a) or (b) below:~~
 - ~~2. Fencing installed by a property owner on an individual lot shall comply with either (a), (b), or (c) below:~~
 - ~~a. Solid fencing shall be no greater than four (4) feet in height; or~~

- ~~b. Fencing shall be constructed with black open wire material, wooden slats, or some other material that allows visual access between the pathway and adjacent uses; or~~
- ~~c. Solid fencing shall be set back at least three (3) feet from the property line that abuts the pathway.~~

Staff Comment: This existing code provision was confusing in structure and has been replaced with simpler requirements. The proposed replacement language is more permissive in two ways: a) allowing homeowners to “box in” residential side and back yards with six-foot fences adjacent to pathways, and b) not regulating fence material. Both are a response to comments that Staff have received from the public.

Staff heard from Commissioner Driskill that graphic guidance (including tables and illustrations) should be made available to property owners clarifying where and how vision clearance triangles apply. Staff will prepare these materials outside of the code update process, but will present the materials to the Planning Commission for their comments prior to general distribution.

- I. Use of hazardous materials. Fences and walls shall not be constructed of or contain any material which will do bodily harm, such as electric or barbed wire, razor wire, broken glass, spikes, or any other hazardous or dangerous material, except as follows:
 - 1. ~~Barbed wire or electrified fences enclosing livestock are permitted in any zone permitting farm use. Electrified fences shall be posted or flagged at not less than 25-foot intervals with clearly visible warnings of the hazard when adjacent to developed areas.~~ **Electrical fences categorically permitted by Oregon House Bill 4027.**

Staff Comment: Livestock-based agriculture is not an allowed use in any of the City's zones. Therefore, this provision has no purpose. Replaced with provision related to Oregon state law that protects installation of some “battery-charged” electrical fences.

- 2. In commercial and industrial zones barbed wire is permitted attached to the top of a fence that is at least six foot in height above grade; provided, that barbed wire shall not extend over a street, sidewalk, alley or roadway. The attached barbed wire shall be placed at least six inches above the top of the fence. (Ord. 890 section 8, 1993; Ord. 740 section 10.3.05(K), 1984; Ord. 955 section 2, 1996; Ord. 981 section 43, 1997; Ord. 1338, 2010; Ord. 1514, 2019)

16.08.115 Arbors

- ~~A. Arbors that are constructed of proper design (height and setbacks) and in accordance with the design standards of the particular zone where it is located are allowed with the following limitations:~~
 - ~~1. Arbors shall be stand-alone structures and shall not be attached to a fence.~~

- ~~2. The arbor shall not exceed eight feet in height and shall maintain a five foot setback from the property line.~~
- ~~3. If the vegetation becomes too full or too high, the owner is financially responsible to rectify the situation, and to maintain the vegetation, and arbor;~~
- ~~4. The primary purpose of the arbor is to support and sustain foliage/vegetation, provide shade, recreational space, and ascetic aesthetic amenity. (Ord. 1514, 2019)~~

Staff Comment: Planning Commission came to the consensus that the entire section regulating arbors was not necessary as a standalone section. Staff had previously argued that portions of the section were too vague and enforceable (e.g., a reference to vegetation that is "too full or too high." Furthermore, provisions elsewhere in the code address vision clearance and hazards in the public right-of-way.

Proposed Definitions:

16.04.XXX Fence.

A fence is a structure composed of wood, metal, plastic, masonry, or other permanent non-vegetated material erected in such a manner as to enclose or partially enclose all or any part of an outdoor space. Trellises, arbors, and similar structures supporting or for the purpose of supporting vegetation when erected in such position as to enclose all or any part of any premises shall be included within this definition.

16.04.XXX Height of fence.

The height of a fence is the vertical distance from the finished grade at the base of the fence to the top of the boards or panels, not including decorative elements such as post caps or finials. If the adjacent finished grade is different on opposite sides of the fence, the height is measured from the side with the highest finished grade.

Staff Comment: Commissioners Jarosh and M. Ellison suggested that the code provide definitions for "fence" and "fence height." Planning-related definitions are found in Chapter 16.04 of the CMC.

TA 25-02: Proposed Code Changes – Clean Version

16.08.110 Fences.

The City's fence code is intended to balance privacy with safety and aesthetic considerations.

- A. In no case shall a fence be constructed in the vision clearance triangle of a street, alley, or pedestrian/bicycle pathway. This applies in all zones and in all lot configurations and supersedes all permitted fence heights identified in the subsections below. As defined in Chapter 16.04, vision clearance triangles must be free of obstructions between two and one-half feet and ten feet in height.
- B. Fences not more than three and one-half feet in height may be constructed within the front street setbacks of any R-1, R-1.5, R-2, C-R, or C-1 zone. Fences not more than six feet in height may be constructed in any interior yard, rear yard, or along an alley.
- C. On corner lots, fences may be constructed up to six feet in height along the secondary street frontage in the side yard setback (i.e., in the street-adjacent side yard), except where the side setback overlaps the lot's front setback. As with all fences within the front setback, fences that continue into the front setback must then step down to a maximum of three and a half feet.
- D. On lots where a rear yard abuts a public street or alley (such as "through lots" as defined in Chapter 16.04), rear yard fences may be constructed up to six feet in height.
- E. The Planning Commission may require sight-blocking or noise mitigating fences for any development it reviews. Any such requirement shall be tied to a specific adverse impact caused by the project (including impacts related to land use compatibility) and not required purely for aesthetic reasons.

Fences of up to eight feet in height are permitted for any development in C-2, C-M, M-1 or M-2 zones, including property lines where residential uses abut these zones.

- F. No fence/wall shall be constructed throughout a subdivision, planned unit development or be part of a project that is/was subject to site and design review approval where the effect or purpose is to wall said project off from the rest of the community unless reviewed and approved by the Planning Commission. (Ord. 890 section 8, 1993; Ord. 740 section 10.3.05(K), 1984; Ord. 955 section 2, 1996; Ord. 981 section 43, 1997)
- G. In R-1, R-1.5, R-2, C-R, and C-1 zones, private fences along a public pedestrian/bicycle pathway may be constructed up to six feet in height, except within a 20-foot setback along the street where they must step down to no more than three and one-half feet, as with other fences in those zones. In the C-2, C-M, M-1, and M-2 zones, private fences along public pedestrian pathways may be constructed up to eight feet but may not conflict with vision clearance requirements.
- H. Use of hazardous materials. Fences and walls shall not be constructed of or contain any material which will do bodily harm, such as electric or barbed wire, razor wire, broken glass, spikes, or any other hazardous or dangerous material, except as follows:

1. Electrical fences categorically permitted by Oregon House Bill 4027.
2. In commercial and industrial zones barbed wire is permitted attached to the top of a fence that is at least six foot in height above grade; provided, that barbed wire shall not extend over a street, sidewalk, alley or roadway. The attached barbed wire shall be placed at least six inches above the top of the fence. (Ord. 890 section 8, 1993; Ord. 740 section 10.3.05(K), 1984; Ord. 955 section 2, 1996; Ord. 981 section 43, 1997; Ord. 1338, 2010; Ord. 1514, 2019)

Proposed Definitions (Chapter 16.04):

16.04.XXX Fence.

A fence is a structure composed of wood, metal, plastic, masonry, or other permanent non-vegetated material erected in such a manner as to enclose or partially enclose all or any part of an outdoor space. Trellises, arbors, and similar structures supporting or for the purpose of supporting vegetation when erected in such position as to enclose all or any part of any premises shall be included within this definition.

16.04.XXX Height of fence.

The height of a fence is the vertical distance from the finished grade at the base of the fence to the top of the boards or panels, not including decorative elements such as post caps or finials. If the adjacent finished grade is different on opposite sides of the fence, the height is measured from the side with the highest finished grade.



City of Canby

Planning & Development Services

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Staff Report File #: TA 25-02 Fence Code Update

HEARING DATE: June 23, 2025
STAFF REPORT DATE: June 16, 2025
TO: Planning Commission
STAFF: Ryan Potter, AICP, Planning Manager

Applicant Request

This is a Staff-driven request for a formal text amendment of the Canby Municipal Code (CMC). In response to community and builder concerns related to the inflexibility of the City's current fence code (CMC Sections 16.08.110, *Fences*, and 16.08.115, *Arbors*), Staff and the Planning Commission have worked together to revise and reorganize the existing code.

The proposed changes are intended to balance privacy with safety and aesthetic considerations. They were crafted under the premise that the Planning Department's planned comprehensive overhaul of the CMC (planned to begin in early 2026) may further amend or entirely replace the code language currently under consideration.

Per the CMC, text amendments are a Type IV decision, requiring a recommendation from Planning Commission and a decision to adopt by City Council.

Staff Recommendation

Based on the application submitted and the facts, findings, and conclusions of this Staff Report, Planning Staff recommend **Approval** of Application TA 25-02. No conditions of approval have been identified.

Attachments

- A. Adopted Chapter 16.08 (contains current Fence Code)
- B. Proposed Code Changes
- C. DLCD Notice

Background

Homeowners and builders of residential projects routinely provide feedback to the Planning Department indicating that the City's fence standards are too restrictive. This feedback is most often related to corner lots and lots backing onto streets, where street-facing side and back yards are only permitted to contain low-height fences. A separate but related issue is the continued practice of homebuilders and fence contractors to ignore the fence code altogether, installing fences that violate adopted City standards. This puts homeowners in a tough position when code enforcement becomes involved.

In 2022, Planning Staff determined that the subject of residential fences needed to be revisited and decided to request direction from the Planning Commission. Because consideration of the issue had to share Staff and Commission time with other applications, projects, and planning efforts, Staff discussed residential fences with the Planning Commission incrementally over a series of six work sessions. The dates and focus of these work sessions are listed below:

- June 27, 2022 Purpose/Need, Design Principles, and Examples
- July 11, 2022 Fence Standards in Nearby Cities
- December 12, 2022 Three-Dimensional Models
- March 31, 2024 Fences on Corner Lots
- August 26, 2024 Fences in Non-Standard Conditions
- April 14, 2025 Proposed Code Language

These work sessions allowed Staff and the Planning Commission to discuss a range of interrelated issues, including urban design, neighborhood character, code enforcement, property rights, privacy, and safety. In general, the Planning Commission voiced concerns about safety (particularly related to sight distance) but also felt that the City's fence standards for corner lots were too restrictive.

The sixth and final work session allowed the Planning Commission to see draft code language and provide final suggestions and comments.

Existing Conditions

The Planning Department and Code Enforcement Officer (part of the Police Department) continue to implement and enforce the adopted fence code (see Attachment A to this Staff Report). However, code enforcement is primarily complaint-driven and many fences out of compliance with the code continue to be constructed.

While some new code violations are deliberate, some are due to ignorance of the adopted standards. Any amendments to the fence code, such as those proposed, should ideally be paired with a communications strategy for ensuring that private parties are aware of the code and comply with it.

Project Overview

As stated above, Planning Staff have prepared code language that amends the existing fence code (see Attachment B to this Staff Report). Amended code provisions are limited to Subsections 16.08.110, *Fences*, and 16.08.115, *Arbors*. While isolated provisions affecting fencing exist elsewhere in the code, those subsections are not proposed to be amended.

Analysis and Findings

I. Applicable Criteria

Applicable criteria used in evaluating this application are listed in the following sections of the City of Canby's Land Development and Planning Ordinance:

- 16.88 General Standards and Procedures
- 16.89 Application and Review Procedures

II. **Facts and Findings**

The following analysis evaluates the proposed project's conformance with applicable approval criteria and other municipal code sections, as listed above in Section I. Sections of the CMC are analyzed in the order that they appear in the code.

Chapter 16.88: General Standards and Procedures

This chapter of the CMC establishes many of the City's procedures for planning-related activities, including the fair and impartial enforcement of regulations, responsibilities related to land use applications, management of the City's code text, and criteria for amendments to the City's Comprehensive Plan.

Subsection 16.88.170: Amendments to Text of Title

Section 16.88.170 specifically addresses "Amendments to text of title." Although this may be construed to refer to amendments to Chapter 16.88 itself, the Planning Department in practice uses the criteria within (see Subsection 16.88.170.D) to analyze all amendments to the Zoning Code portion of the CMC (Chapter 16).

D. Standards and Criteria. In judging whether or not this title should be amended or changed, the Planning Commission and City Council shall consider:

- 1. The Comprehensive Plan of the city, and the plans and policies of the county, state, and local districts, in order to preserve functions and local aspects of land conservation and development;*
- 2. A public need for the change;*
- 3. Whether the proposed change will serve the public need better than any other change which might be expected to be made;*
- 4. Whether the change will preserve and protect the health, safety and general welfare of the residents in the community;*
- 5. Statewide planning goals.*

The analysis below evaluates the proposed amendments to the fence code with the above criteria.

- 1. The Comprehensive Plan of the city, and the plans and policies of the county, state, and local districts, in order to preserve functions and local aspects of land conservation and development;*

Finding 1: The Comprehensive Plan contains the City's goals and policies for a broad range of subjects, many of which are related to growth and development. However, the proposed changes to the fence code are modest and generally have no impact on the implementation of the City's goals and policies, even those related to housing and residential zones, where the proposed code amendments most apply.

Compliance with selected Comprehensive Plan goals and policies are addressed below.

Citizen Involvement Element

- Policy 2: *Canby shall strive to eliminate unnecessarily costly, confusing, and time-consuming practices in the development review process.*

Response: The proposed amendments to the fence code are specifically aimed at creating clarity for project applicants and homeowners when they are planning to build, repair, or replace a fence. The proposed amendments remove confusing language and streamline the text of Subsections 16.08.110 and 16.08.115.

Land Use Element

- Goal 1: *To guide the development and uses of land so that they are orderly, efficient, aesthetically pleasing, and suitably related to one another.*

Response: The proposed amendments to the fence code were crafted following a series of Planning Commission work sessions that involved deep discussions related to neighborhood character, safety, and land use compatibility. While implementation of the proposed amendments would not change overall land use patterns, they would have a minor impact how residential uses interface with each other, with other land uses, and with the public realm.

In particular, allowing taller fences in corner lot side-yards and in street-facing back yards would in some cases increase a “tunnel effect” along the street where the neighborhood could potentially seem less welcoming or visually pleasing, and would prevent longer-range sight lines within a neighborhood. However, this impact was considered by Staff and the Planning Commission and weighed against other considerations, including homeowner privacy, safety, and generally reduced lot sizes in developments, which affects usable space on a lot. Furthermore, the proposed changes related to fences in corner lot side-yards and in street-facing back yards largely reflects what is already being constructed in Canby.

With or without the proposed amendments, the fence code will continue to “guide the development” of land uses in the City.

Other goals and policies of the Comprehensive Plan would not be affected by the proposed code amendments. The amendments would not affect residential densities (Housing Element), conversion of agricultural or forest lands (Urban Growth Element), overall circulation patterns or the financing of transportation improvements (Transportation Element), or energy consumption (Energy Element). As under existing conditions, fence code provisions of the CMC would only affect localized, site-specific urban design.

2. A public need for the change;

Finding 2: Builders and homeowners have consistently advocated for added flexibility in the fence code related to residential fences and for more clarity in the code generally. Staff believe these sentiments are a clear mandate for revising the code.

3. Whether the proposed change will serve the public need better than any other change which might be expected to be made;

Finding 3: Because the foundational premise of the proposed amendments to the fence code is changing adopted development standards, a Planning Director interpretation of the existing code would not be sufficient to address the desired issues. Therefore, a formal text amendment is necessary and no feasible alternative to a formal text amendment is available.

4. Whether the change will preserve and protect the health, safety and general welfare of the residents in the community;

Finding 4: Health, safety, and general welfare of the community were key discussion points when the proposed code amendments were discussed with the Planning Commission. Most of the modest edits to the fence code would have no impact on health and safety. The proposed permitting of taller fences in corner lot side-yards and along

street-facing back yards would reduce some visibility for pedestrians, bicyclists, and motorists. In particular, where six-foot fences abut the public right-of-way in side-yards and backyards, motorists backing out of driveways will have reduced visibility of pedestrians on the sidewalk. However, to mitigate this, the Planning Commission has proposed adding language to the code emphasizing the role of vision clearance triangles in preserving key sight lines.

5. Statewide planning goals.

Finding 5: While statewide planning goals are an essential lens in which to evaluate existing or proposed local land use regulations, these goals generally address “bigger-picture” aspects of a City’s governance and planning. The modest changes proposed for Canby’s fence code would have no effect on the City’s adherence to statewide goals related to citizen involvement, land use planning, natural resources, hazards, recreation, economic development, housing, public facilities and services, energy consumption, transportation or urbanization.

For the above reasons, Planning Staff finds that this request is consistent with applicable provisions of CMC Subsection 16.88.170.

Subsection 16.88.190: *Conformance with Transportation System Plan and Transportation Planning Rule*

As articulated in the preamble to this subsection of the CMC, a proposed comprehensive plan amendment, zone change or land use regulation change, whether initiated by the City or by a private interest, shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with the Transportation Planning Rule (OAR 660-012-0060).

A plan or land use regulation amendment significantly affects a transportation facility if it:

- 1. Changes the functional classification of an existing or planned transportation facility;*
- 2. Changes standards implementing a functional classification system;*
- 3. As measured at the end of the planning period identified in the adopted plan:*
 - a. Allows types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility; or*
 - b. Would reduce the performance of the facility below the minimum acceptable performance standard identified in the Transportation System Plan;*
 - c. Would worsen the performance of a facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the Transportation System Plan.*

Finding 6: The proposed text amendment to the CMC (TA 25-02) does represent a “land use regulation change.” However, the proposed amendments to the fence code would not change the functional classification of a transportation facility, nor would they result in land use changes that would affect the overall performance of a facility identified in the Transportation System Plan. While many fences do abut street and alley rights-of-way, changes in the height or design of such fences are not anticipated to generate or

redistribute vehicle trips. For fences along trails and paths, proposed amendments to the fence code may affect the visual appearance of those facilities but would not affect their ability to function as circulation routes.

For the above reasons, Planning Staff finds that this request is consistent with applicable provisions of CMC Subsection 16.88.190.

Chapter 16.89: Application and Review Procedures

This chapter of the CMC establishes procedures for reviewing various types of land use applications. It identifies noticing and hearing requirements.

Finding 7: Table 16.89.020 establishes that text amendments are considered a “Type IV” decision-making process, which involves a recommendation by Planning Council and final decision by City Council (see Subsection 16.89.060). Accordingly, Planning Staff have processed the proposed text amendment in this manner.

The same table also identifies requirements for a neighborhood meeting and noticing radius of 500 feet for text amendments. However, these requirements are more appropriate for text amendments that apply to specific sites, zones, or special planning areas. Because the proposed text amendments would apply Citywide and would not target a narrowly-defined population or area of land, the Planning Director has chosen to waive these two requirements. Interested parties will have the opportunity to provide public comments on the text amendment at both the Planning Commission and City Council hearings, and as previously noted there have been six Planning Commission work sessions regarding the fence code update.

For the above reasons, Planning Staff finds that this request is consistent with applicable provisions of CMC Chapter 16.89 to the extent feasible.

IV. Conclusion

Based on the information and findings above, Staff recommends that the Planning Commission recommend **approval** of the proposed Fence Code Update (TA 25-02).

V. Conditions of Approval

Staff do not find it necessary to subject this decision to any conditions of approval.



DRAFT MINUTES

CANBY PLANNING COMMISSION

6:00 PM – August 11, 2025

City Council Chambers – Virtual Meeting via Zoom

PRESENT – Commissioners: Matt Ellison (Chair), Dan Ewert (Vice Chair), Judi Jarosh, Michael Hutchinson, and Jennifer Driskill

ABSENT – Craig Lewelling

STAFF – Don Hardy, Planning Director, Ryan Potter, AICP, Planning Manager, Emily Sasse, Recording Secretary

OTHERS – None

1. CALL TO ORDER

- a. Pledge of Allegiance

2. CONSENT ITEMS

- a. Draft Meeting Minutes – November 25, 2024 (continued from March 24, 2025)

Due to a lack of quorum of the Commissioners present at the November 25, 2024 meeting, approval will be considered at a meeting in the future.

- b. Draft Meeting Minutes – December 9, 2024

Motion: A motion was made by Commissioner Jarosh and seconded by Commissioner Ewert to approve the draft meeting minutes from December 9, 2024, as written. Motion approved 5/0.

3. CITIZEN INPUT ON NON-AGENDA ITEMS – None

4. OLD BUSINESS – None

5. NEW BUSINESS – None

6. PUBLIC HEARINGS

- a. **Fence Code Update (TA 25-02) – Ryan Potter, AICP, Planning Manager**

City staff sought Planning Commission recommendation to approve an update of the City's Fence Code, which is found in Chapter 16.08 of the Canby Municipal Code. The proposed amendments have been developed with the Planning Commission over a series of six work sessions. This request is a Type IV legislative approval which requires initial consideration by the Planning Commission and a final decision by City Council.

Planning Manager Potter provided a brief summary of the revisions made to the Fence Code text amendment, which were based on feedback received during the previous Planning Commission work session. He gave a status update and outlined the next steps in the adoption process, noting that the

amendment is scheduled for City Council consideration on August 20, 2025. Potter noted that City Staff will develop diagrams and informational handouts to communicate the new fence code changes to builders, fence contractors, and homeowners. Staff presented analysis addressing the five approval criteria for text amendments and recommended approval of TA 25-02, Fence Code Update, as written. Potter further noted that additional opportunities for revisions may arise during the upcoming comprehensive code update, should the Commission deem further changes necessary.

Motion: A motion was made by Commissioner Ewert and seconded by Commissioner Hutchinson to approve TA 25-02, Fence Code Update, as written. Motion approved 5/0.

7. ITEMS OF INTEREST/REPORT FROM PLANNING STAFF

- a. The next Planning Commission meeting is planned for **Monday, August 25, 2025**, at 6:00 pm in the Council Chambers.
- b. Planning Director's Update

Director Hardy shared that there will be another Community Summit meeting on August 19th, 2025, at 6 p.m. Hardy also shared that Leah McCarthy will be joining as the new Planning Commissioner and gave a brief update on the timeline of the Comprehensive Plan Update and Transportation System Plan.

Hardy gave an update regarding electrical transmission capacity within Canby. The lines that serve the City were identified as having large load limitations, particularly for loads over one megawatt. The City plans to notify the developers of a potential moratorium on large load developments, though this is still in the notice phase and would require a public hearing. A work session is scheduled for September 17th with Bonneville Power Administration and PGE to discuss solutions, including the possibility of combining the two lines into one 115,000-volt line. The City's Interim Administrator, who has previous PGE experience, has been helpful in navigating these complex utility issues.

8. ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION

Further conversation about the electrical transmission capacity issues in Canby, including potential development limitations and planned utility infrastructure improvements, was had between the Commissioners.

Finally, the Commissioners gave praise to the extensive work that City staff have done in order to make the fence code update happen.

9. ADJOURNMENT

Motion: A motion was made by Commissioner Driskill and seconded by Commissioner Jarosh to adjourn the meeting. Motion approved 5/0.

The meeting adjourned at 6:41 P.M.

Work Session

Residential Fence Standards

Ryan Potter, AICP, Senior Planner

Planning Commission - June 27, 2022

Outline of Presentation

1. Purpose/need for discussion
2. What the code requires
3. Examples of code-compliant fences
4. Design principles
5. Fence violations incl. examples
6. Pros/cons
7. Next steps

Why does this issue need discussion?

- The City is seeing substantial residential growth, with a large number of new homes being constructed.
- Some builders in town have chosen to ignore our fence code, which puts new homeowners in a tough position.
- In general, there are differing opinions about what our fence standards should be.



Planning Staff Position

- We're at a point where this **subject needs revisited**.
- Staff are **looking for direction** from policy makers.
- Staff understand many of the **nuances** and will try to explain/ demonstrate what those are.
- We are not currently looking to revisit standards regarding absolute maximum fence heights (6 feet in residential zones, 8 feet in industrial zones), or commercial/industrial fences in general.

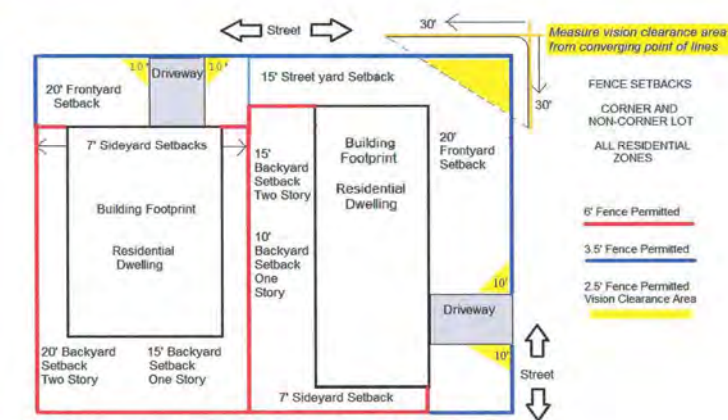
What Our Code Requires

Summary of Subsection 16.08.110:

- In general, residential development can have 6' tall fences.
- However, within front setbacks and secondary street frontage setbacks, fences can only be 3.5' tall.
- At intersection corners, there is a vision clearance triangle that can only have 2.5' tall fences.
- Older fences to be "grandfathered in."

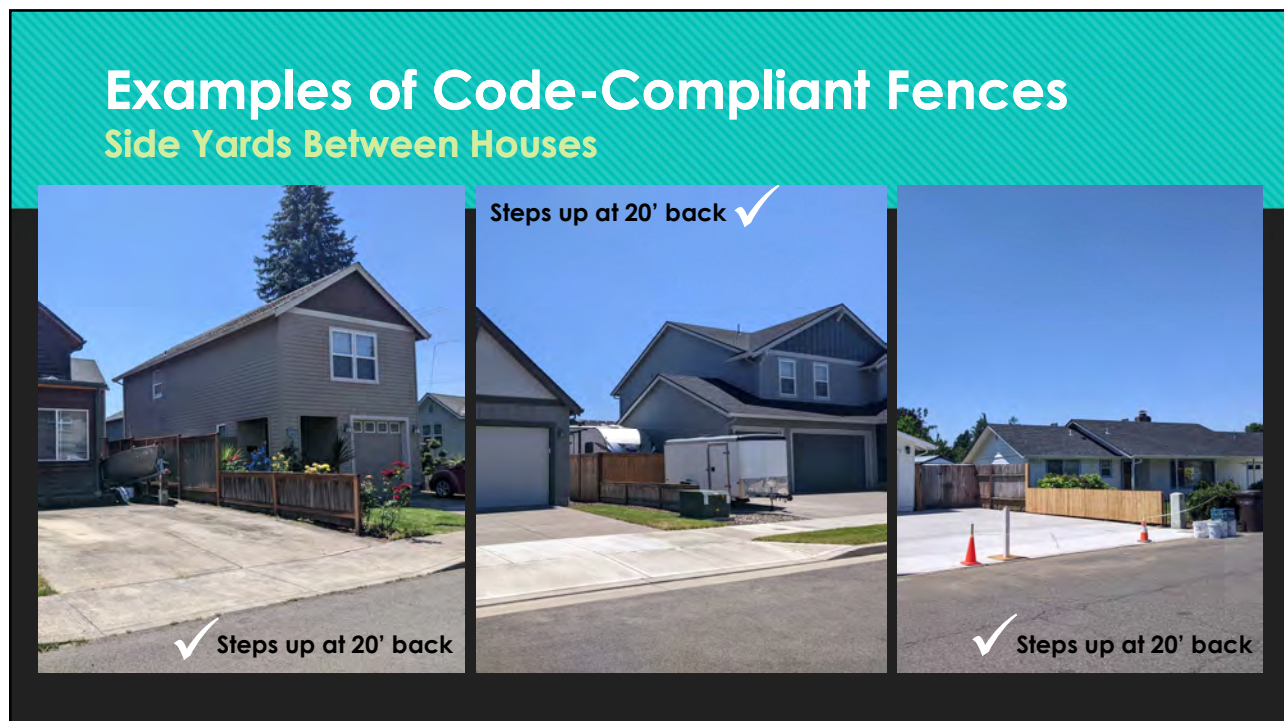
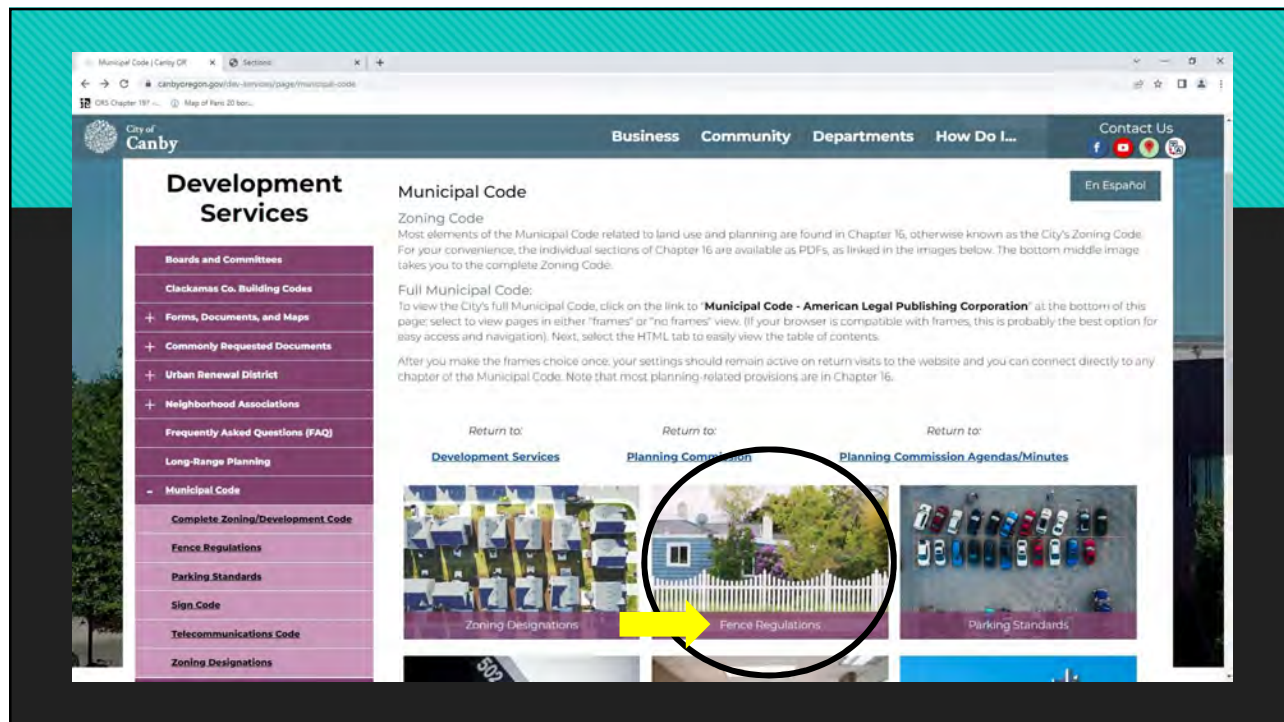
CORNER & NON-CORNER LOTS

FENCE SETBACKS, HEIGHTS & VISION CLEARANCE TRIANGLE



Notes: A fence in compliance with these standards does not require a building permit

- Full-height fences are not allowed in front setbacks
- This includes secondary frontages



Examples of Code-Compliant Fences

Corner Conditions



Examples of Code-Compliant Fences

Corner Conditions



Examples of Code-Compliant Fences

Corner Conditions

Steps down at "side" with vegetation ✓

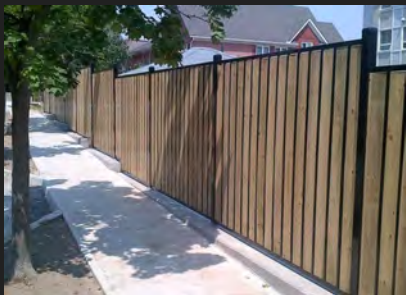


Full height fence that is set 15' back ✓



Design Principles (why is the code like it is?)

1. Prevent a "fortress effect" where entire street frontages are dominated by sidewalk-adjacent full-height fences. Where applied excessively, the fortress effect is thought to make the neighborhood less friendly and less attractive by literally walling off the private realm from the public realm.

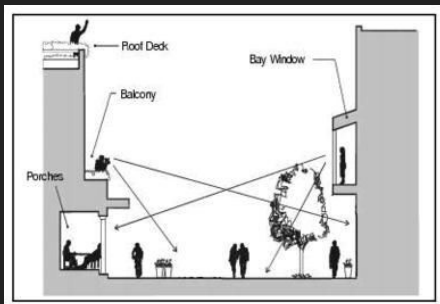


Design Principles (why is the code like it is?)

2. Improve visibility for vehicles backing up out of driveways, both at the front and sides of residential lots. When driveways are adjacent to full-height fences, it is harder for drivers to see pedestrians on the sidewalk or other vehicles in the street while backing up, creating a safety hazard.



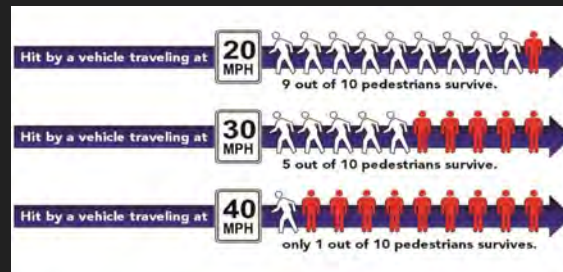
Design Principles (why is the code like it is?)



3. Create more "eyes on the street." This is a urban planning principle that asserts that streets are safer and more secure when more people in homes or other buildings can see outward toward the street. For example, if a small child runs into the street and full-height fences block views from a home's front windows, parents may not see that their child is in danger.

Design Principles (why is the code like it is?)

4. Streets with continuous walls or fences along the sidewalk are often observed to experience increased speeding by motorists, who don't feel the accountability that comes with high visibility from surrounding land uses.



Fence Issues

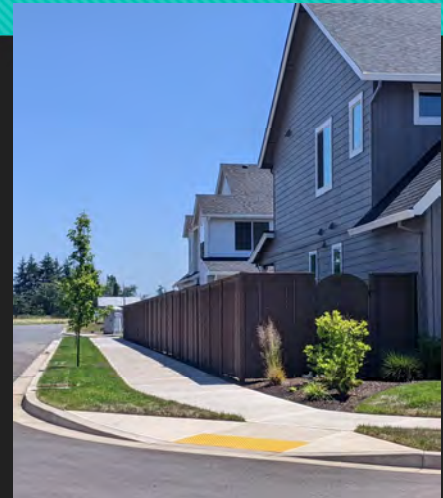
- Builders (and sometimes homeowners) are "boxing out" their back yards with 6' fences, even along secondary frontages which is not allowed.
- Planning staff understand pros and cons of different fence layouts, but we have an adopted Municipal Code with clear standards.
- An increase in smaller lots has exacerbated the issue.

Non-Compliant Fences



Non-Compliant Fences

❌ Additional examples



Non-Compliant Fences



Non-Compliant Fences



☑ Also allowed: wider corner lots

Non-Compliant Fences



☒ What was built



Allowed ☑



Allowed ☑

Pro/Cons

	PROS	CONS
Shorter Fences Along Streets	<ul style="list-style-type: none"> • More visibility between private/public realms • Friendlier pedestrian environment • Showcases residential character • Easier to see backing out 	<ul style="list-style-type: none"> • Less privacy • Harder to contain pets/children • Harder to contain visual clutter
Taller Fences Along Streets	<ul style="list-style-type: none"> • More privacy • Easier to contain pets/children • Easier to contain visual clutter 	<ul style="list-style-type: none"> • Less visibility between private/public realms • Less friendly for pedestrians • Hides residential character and greenery • Harder to see backing out

Next Steps

- General discussion for now
- Bring forward policy options:
 - Keep vs. tighten vs. loosen standards
 - Compromise solutions for specific conditions
 - Enforcement
 - Site plan requirements

Work Session #2

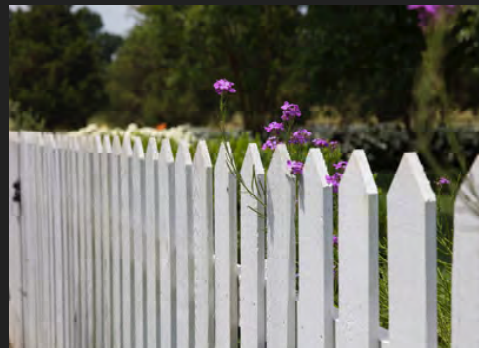
Residential Fence Standards

Ryan Potter, AICP, Planning Manager

Planning Commission – July 25, 2022

Outline of Presentation

1. Recap of First Work Session
2. Summary of PC Comments & Discussion
3. Update on C of O Question
4. Fence Standards in Nearby Cities
5. Next steps



Recap of Work Session #1

Outline from First Staff Presentation:

1. Purpose/need for discussion
2. What the code requires
3. Examples of code-compliant fences
4. Design principles
5. Fence violations including examples
6. Pros/cons
7. Next steps

Staff Summary of PC Discussion



City of Canby

MEMO TO PLANNING COMMISSION

DATE: June 30, 2022
WORK SESSION DATE: July 11, 2022
TO: Planning Commission
STAFF: Ryan Potter, AICP, Planning Manager
SUBJECT: Fence Standards – Summary of Work Session #1

Overview

On June 27, 2022, Canby Planning Staff and the Planning Commission conducted a work session—the first in a series of sessions—to discuss the City of Canby's residential fence standards and how those standards are implemented. Staff presented the Commission with a presentation that introduced the overall topic, explained what the City's code currently requires

Consensus Items

- There should be **latitude for a homeowner to realize their goals** for their property while still addressing some of the **design considerations** that the current code is based on.
- Setback requirements for fences should be **reasonable**.



Consensus Items



- **Enforcement** of code violations **should be increased** for the sake of fairness and consistency, and for holding builders and developers responsible for the work they do in Canby.
- Builders and developers working on larger subdivisions, in particular, need to be held responsible when they **repeatedly and knowingly violate the City's fence code**.

Consensus Items

- The City should explore additional **methods for managing compliance** with code.
- The City's development standards should be **more specific, more clear, and easier to use** by everyone.
- The Planning Commission has a strong interest in maintaining the **character and attractiveness** of the community.



Topics & Issues Raised by PC

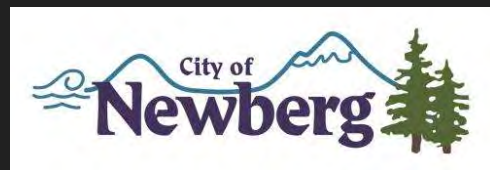
- | | |
|---|--|
| <ul style="list-style-type: none"> ▪ Consistency with County codes ▪ Certificate of occupancy procedures ▪ Fences vs. vegetation ▪ Regulations for specific conditions <ul style="list-style-type: none"> ▪ Adjacent to parks/logging trail/etc. ▪ Streets with planned improvements ▪ Unimproved streets ▪ Backing onto major streets ▪ Nonconforming uses | <ul style="list-style-type: none"> ▪ Potential new types of review (e.g., "adjustments") ▪ Enforcement procedures ▪ Grandfathering ▪ Expectations of homeowners ▪ Definitions |
|---|--|

Certificate of Occupancy Question

- **City involvement in C of O's for single-family homes**
 - Would require substantial staff resources
 - Would not address fences built after home is built
- **County's perspective**
 - Building code doesn't allow them to regulate fences under 7 feet
 - Suggestions: additional conditions of approval or enforcement actions

Fence Standards in Nearby Cities

- **City of Newberg**
 - 4 feet max in front yard setback, 6 feet max elsewhere
 - Allows corner lots to select a "front"; secondary frontage is considered "interior"
 - Vision clearance provisions



- (a) Not to exceed six feet in height. Located or maintained within the required interior yards. For purposes of fencing only, lots that are corner lots or through lots may select one of the street frontages as a front yard and all other yards shall be considered as interior yards, allowing the placement of a six foot fence on the property line. In no case may a fence extend into the clear vision zone as defined in NMC 15.410.060.
- (b) Not to exceed four feet in height. Located or maintained within all other front yards.

Fence Standards in Nearby Cities

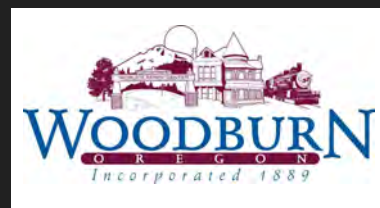


- **City of Lake Oswego**
 - 4 feet max along street frontages within first 10 feet
 - 6 feet max elsewhere
 - Vision clearance provisions

Maximum Height of a Fence in a Residential Zone: The maximum height of a fence or a fence/wall combination is 6 feet. However, when located within 10 feet of a property line abutting a public or private street or an access easement serving more than two lots, a fence or fence/wall combination can only be 4 feet in height. For the purposes of this section, alleys are not considered streets.

Fence Standards in Nearby Cities

- **City of Woodburn**
 - Fence permit
 - Allows fences up to 8 feet
 - Max height of 3 feet in front setbacks; on corner lots, fences above 3 feet must be set back 5 feet
 - Vision clearance provisions



Fence Standards in Nearby Cities



City of Sherwood

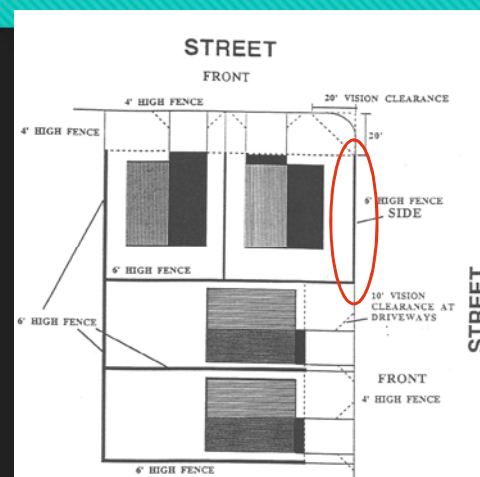
- 3.5 feet max in front setbacks
- 6 feet max elsewhere
- On corner lot side yards, fences above 3.5 feet have to be set back 5 feet
- Vision clearance provisions

- Fences and walls on corner lot street side setbacks are allowed up to 42 inches tall up to the property line or up to 6 feet tall no closer than 5 feet from the property line.

Fence Standards in Nearby Cities

City of Wilsonville

- Fences allowed to be 6 foot max in corner lot side yard setback
- Similar to what many developers have requested in Canby



Fence Standards in Nearby Cities



- **City of Oregon City**
 - Most restrictive of these six cities
 - 3.5 foot max in front setbacks AND within 40-foot public ROW setback
 - Doesn't appear to be enforced

1. Fences and walls – Fences and walls over 42 inches shall not be located in front of the front faced or within 40 feet of the public right-of-way, whichever is less. All other fences (including fences along the side and rear of a property) shall not exceed 6 feet in total height unless as permitted in 17.54.100, Section (B).

Next Steps

- Discussion of policy direction
- Staff will bring forward policy options

Work Session #3

Residential Fence Standards

Ryan Potter, AICP, Planning Manager

Planning Commission – December 12, 2022

Outline of Presentation

1. Recap of Previous Work Sessions
2. Three-dimensional models
3. Discussion
4. Next steps



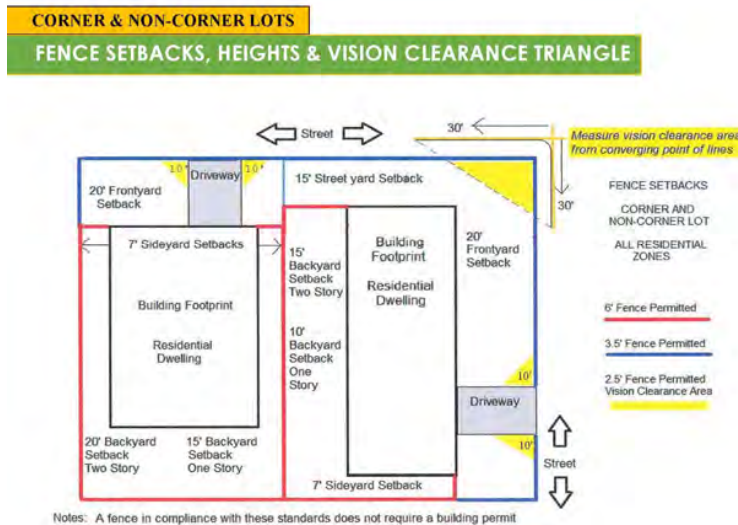
Recap of Work Sessions #1 and #2

Work Session 1:

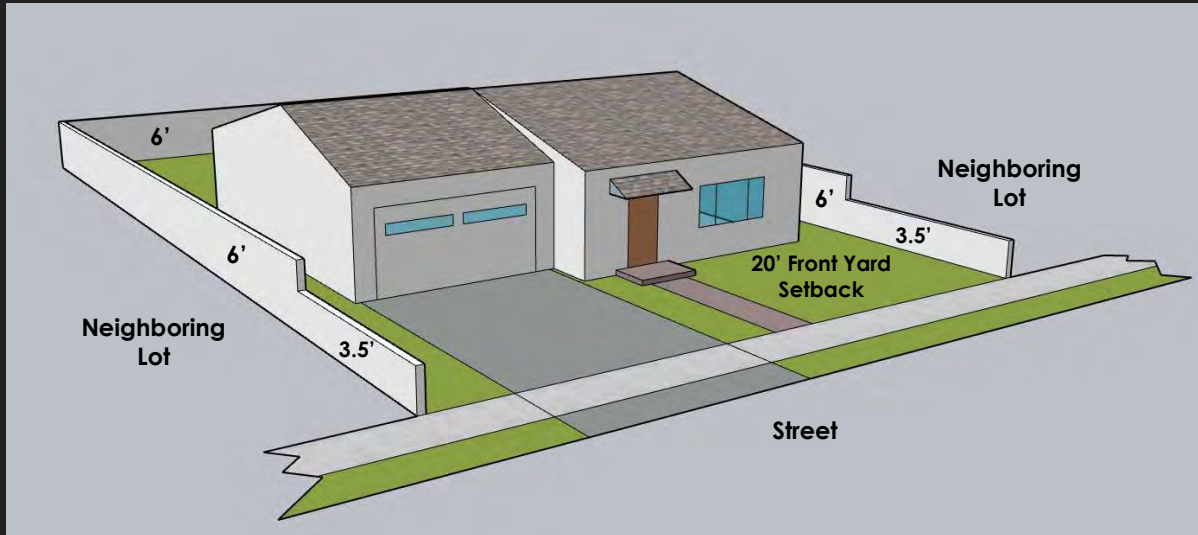
1. Purpose/need for discussion
2. What the code requires
3. Examples of code-compliant fences
4. Design principles
5. Fence violations including examples
6. Pros/cons

Work Session 2:

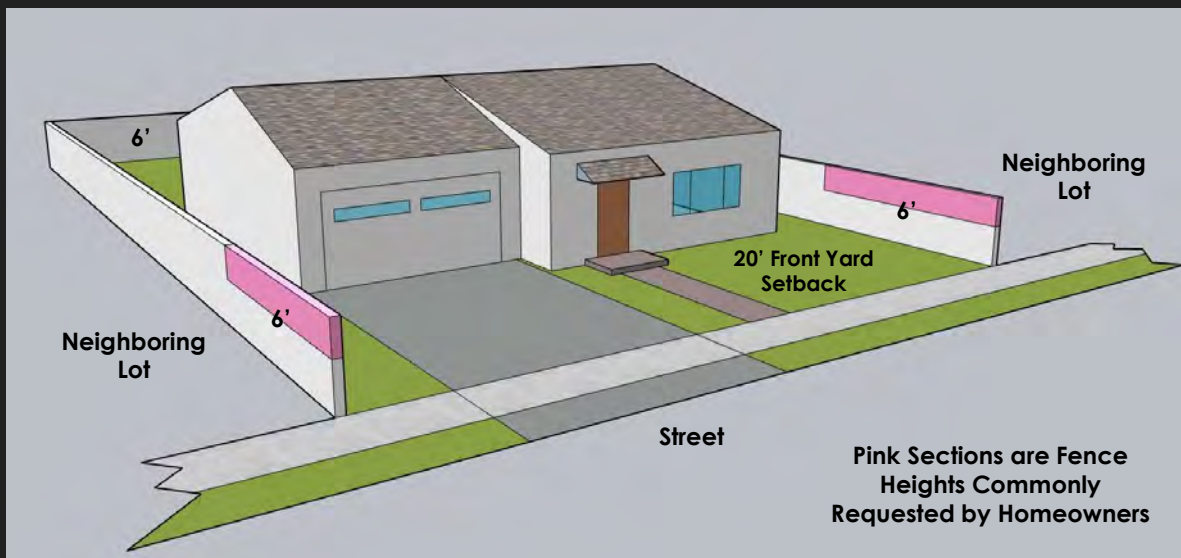
1. Recap of first session
2. Summary of PC Comments and Discussion
3. Examples of code-compliant fences
4. Update on C of O question
5. Fence standards in nearby cities



Currently Allowed – Mid-block Lot



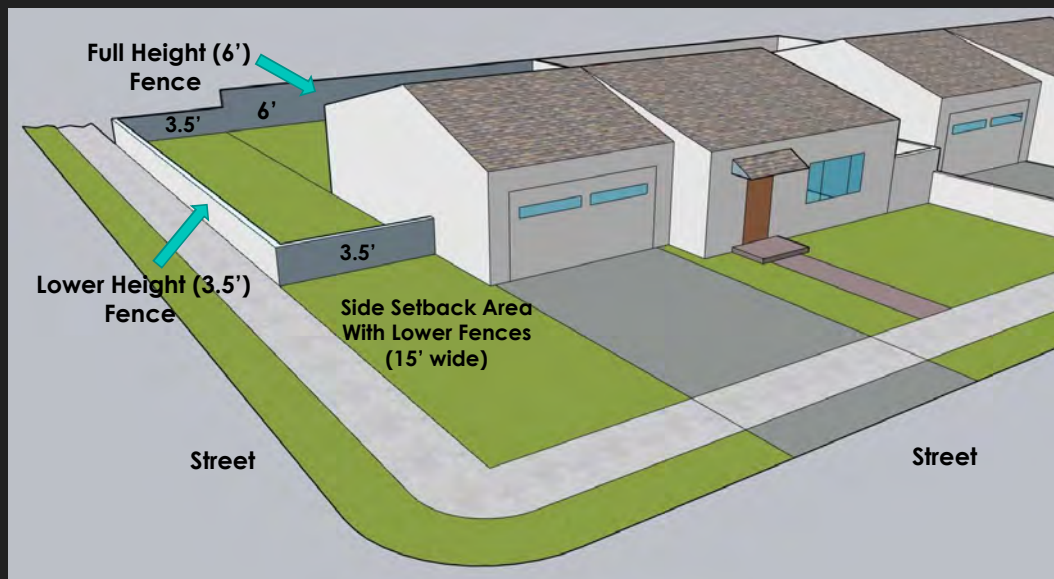
Not Currently Allowed – Mid-block Lot



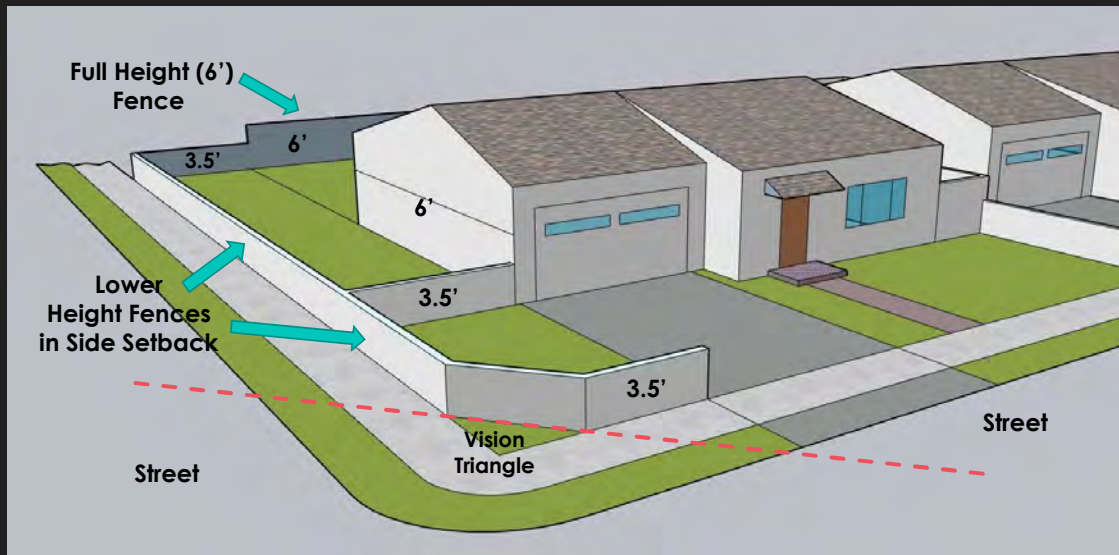
Currently Allowed – Corner Lot (#1)



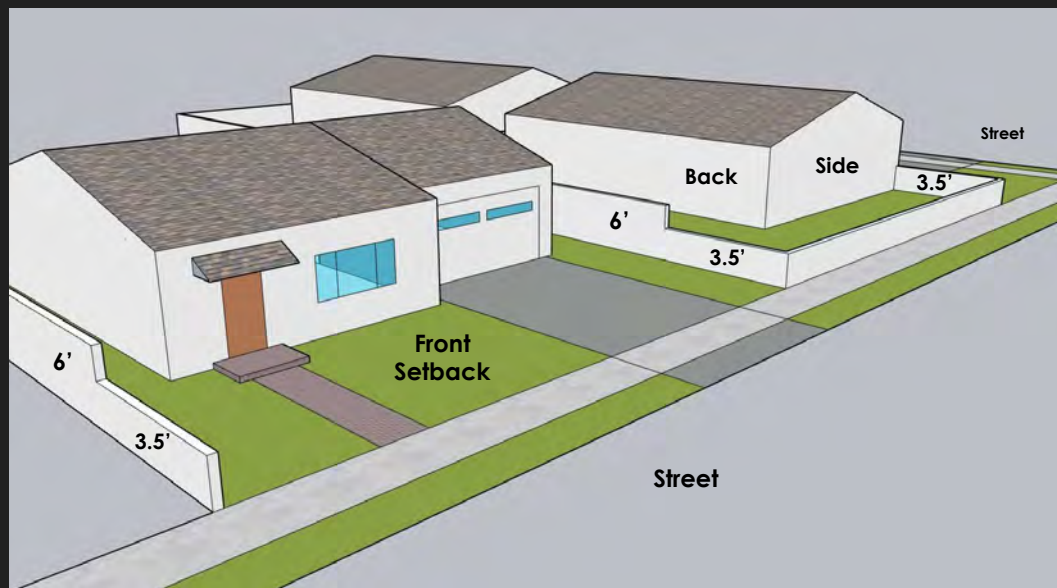
Currently Allowed – Corner Lot (#2)



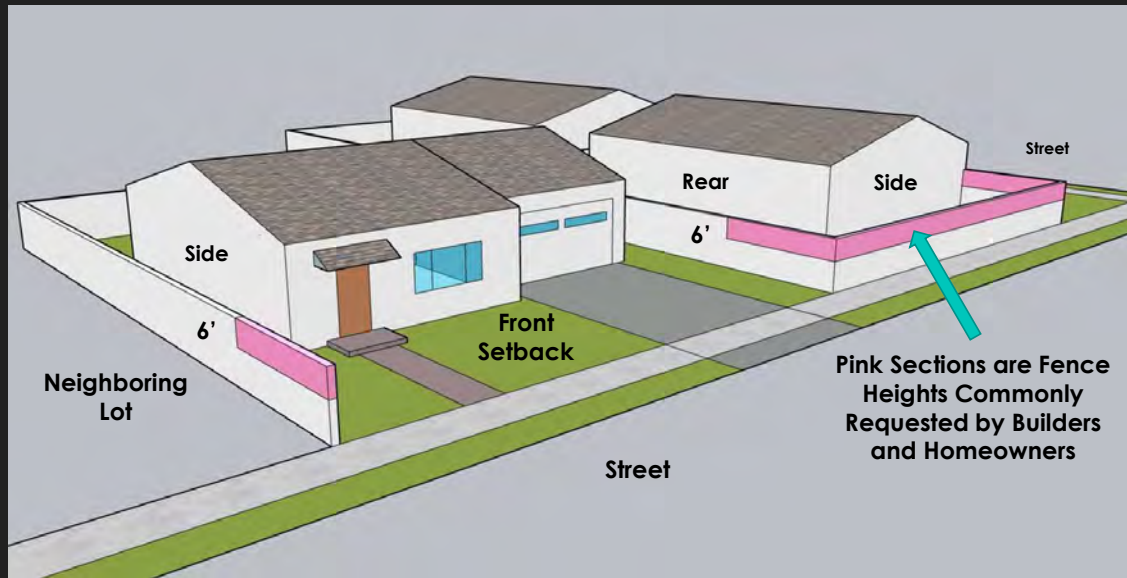
Currently Allowed – Corner Lot (#3)



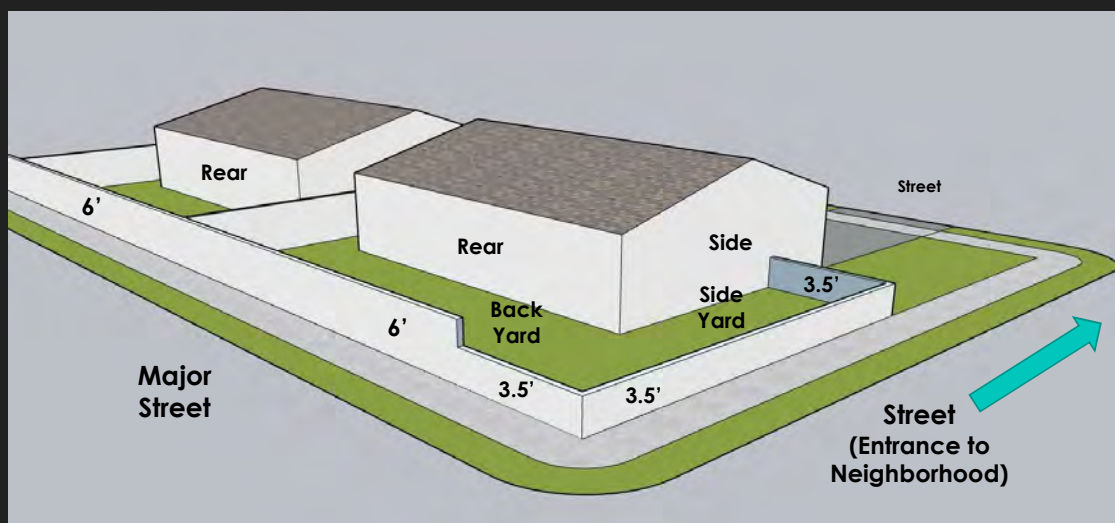
Currently Allowed – Corner & Mid-block Lot



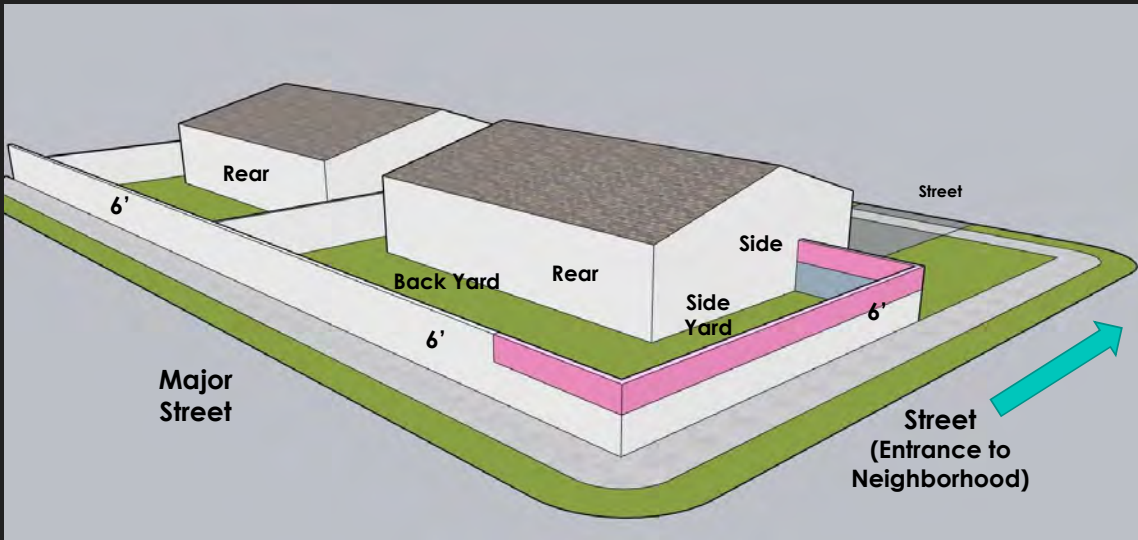
Not Currently Allowed – Corner & Mid-block Lot



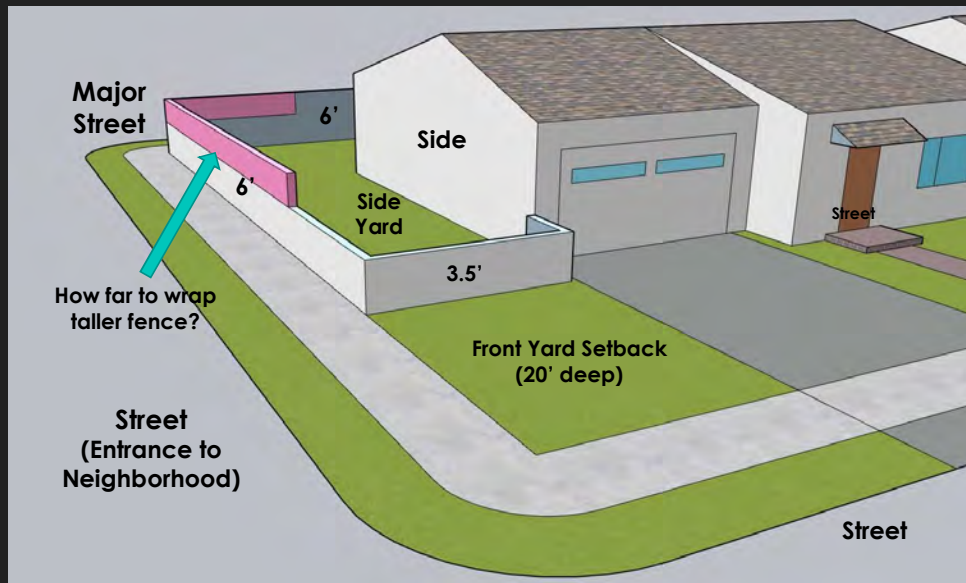
Gray Area – Backing onto Major Street



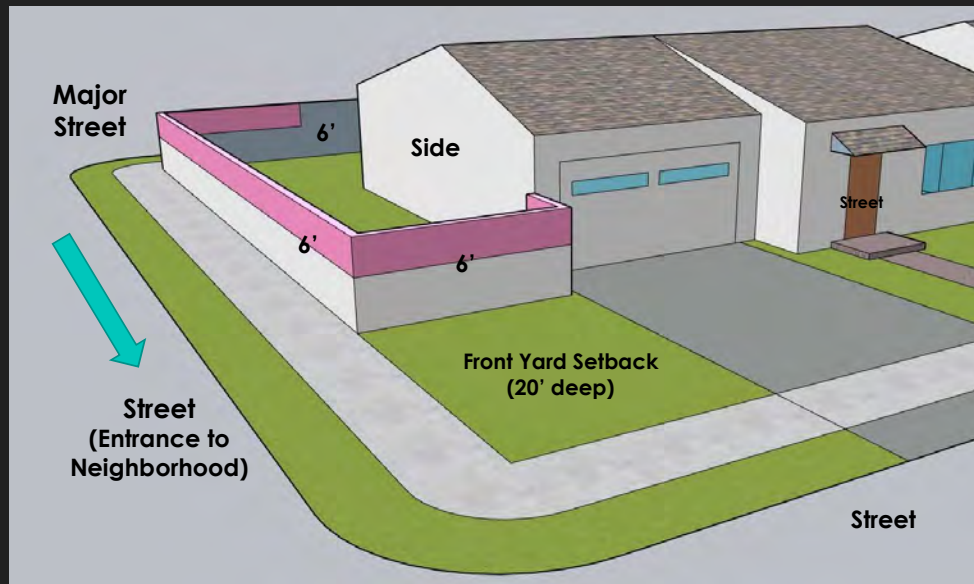
Gray Area – Backing onto Major Street



Gray Area – Backing onto Major Street



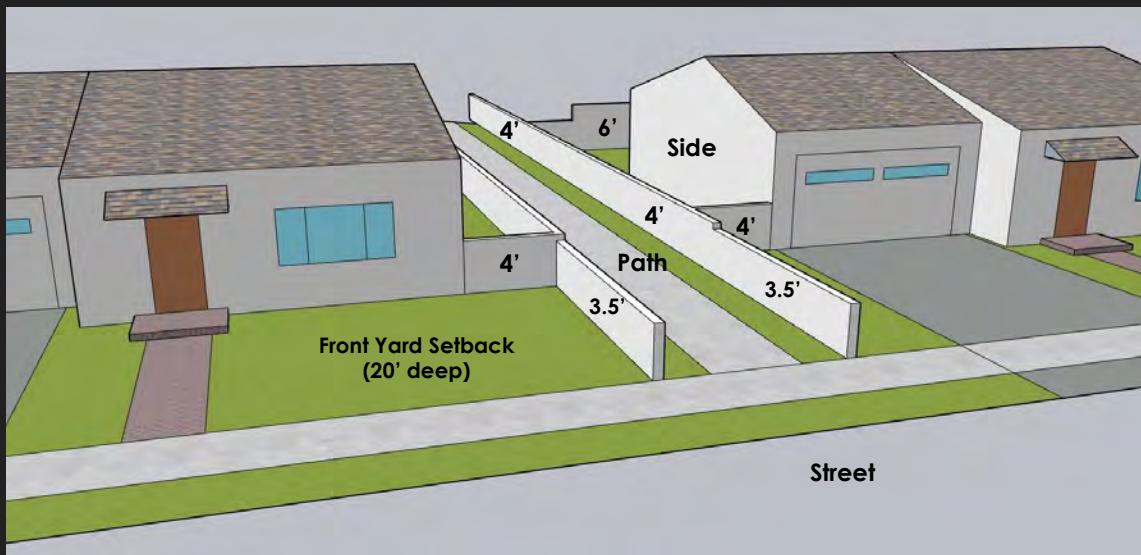
Gray Area – Backing onto Major Street



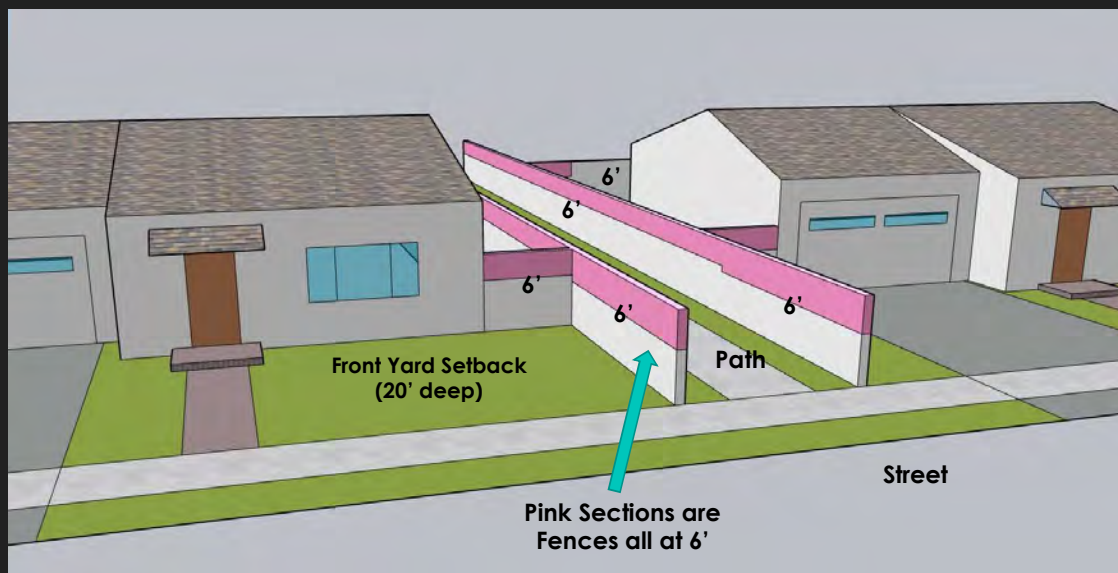
Private Fences Along Public Pathways

- G.** In all zones, private fences along a public pedestrian/bicycle pathway shall comply with the following in order to provide security and visibility for pathway users while maintaining privacy for the residence.
1. Fencing installed as part of a new subdivision shall comply with either (a) or (b) below.
 2. Fencing installed by a property owner on an individual lot shall comply with either (a), (b), or (c) below.
 - a. Solid fencing shall be no greater than four (4) feet in height; or
 - b. Fencing shall be constructed with black open wire material, wooden slats, or some other material that allows visual access between the pathway and adjacent uses; or
 - c. Solid fencing shall be set back at least three (3) feet from the property line that abuts the pathway.

Currently Allowed – Adjacent to Pathways

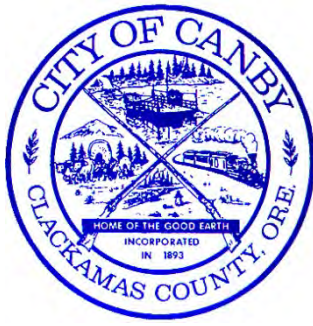


Not Currently Allowed – Adjacent to Pathways



Next Steps

- Discussion
- Staff will bring forward policy options



City of Canby

MEMO TO PLANNING COMMISSION

DATE: March 31, 2024
WORK SESSION DATE: April 8, 2024
TO: Planning Commission
STAFF: Ryan Potter, AICP, Planning Manager
SUBJECT: Fence Standards – Session #4

Overview

Canby Planning Staff and the Planning Commission have held three work sessions related to updating the City's fence standards. These previous sessions are listed below, along with links to the applicable meeting packets and YouTube videos. Staff encourage the Planning Commission to revisit these materials as a refresher on previous discussions.

Work Session	Date	Link to Packet and Video
1	June 27, 2022	https://www.canbyoregon.gov/bc-pc/page/planning-commission-meeting-52
2	July 25, 2022	https://www.canbyoregon.gov/bc-pc/page/planning-commission-meeting-53
3	December 12, 2022	https://www.canbyoregon.gov/bc-pc/page/planning-commission-meeting-61

Upon digesting the Commission's previous comments, Planning Staff recognize that fencing is a complicated subject with a number of facets:

- Property rights and property owner's expectations,
- Code enforcement and fairness,
- Responsibilities of developers,
- Privacy and security,
- Urban design and neighborhood/community character,
- Safety, including pedestrian safety; and
- Sight distance and vision obstruction.

Due to this complexity, Staff have identified an approach to addressing potential code changes by placing different aspects of the subject in three different "buckets" to be discussed semi-independently. These are summarized on the following page.

Bucket 1	Bucket 2	Bucket 3
Fences for Typical Residential Yards	Fences for Special Conditions	Enforcement/ Processes
<ul style="list-style-type: none"> Fences heights in corner lot side yards Fence heights within front setbacks 	<ul style="list-style-type: none"> Fences that back onto roadways Fences along trails/paths Fences that abut parks Fences separating uses (residential adjacent to nonresidential) Etc. 	<ul style="list-style-type: none"> Proactive vs. reactive enforcement Potential for enforcing vision clearance/sight obstruction/vegetation overgrowth Fence permit vs. no permit Certificate of occupancy oversight

In recent years, the items under Bucket 1 have caused the most issues with homeowners, builders, and developers. Staff recommend we aim to resolve the issues with these provisions first, with the idea that items under Bucket 2 and Bucket 3 will be subsequently addressed.

Fences for “typical” residential yards have been an issue largely because corner lot homeowners generally prefer to fully enclose their back yards with full height-fences, to preserve privacy and contain pets. Often, the aforementioned parties have either 1) ignored the code and built fences that are too high, or 2) complied with the code but strongly voiced objections to the current height limits.

Current Fence Code

Although a few tangential provisions are located elsewhere, Canby’s fence code is primarily located in Subsection 16.08.110 of Chapter 16.08, *General Provisions*. This chapter is an assortment of code provisions, many unrelated to each other, which make this a less than ideal location for the fence code. Staff have received feedback that the fence code is hard to find for the layperson.

The current fence code is reproduced in its entirety below. Note that the first two provisions (A and B) are those that apply to Bucket 1 site conditions:

16.08.110 Fences.

- A. Fences not more than three and one-half feet in height may be constructed within the street setbacks of any R-1, R-1.5, R-2 or C-1 zone. Fences not more than six feet in height may be constructed in any interior yard, rear yard, or street yard along an alley; provided, however, that in no case shall a fence be constructed in violation of the requirements of a vision clearance area.
- B. On corner lots, the 3.5-foot height limit will apply within the required setback along both street-facing yards.
- C. No more than one row of fencing is allowed within a required street yard setback.

- D. The Planning Commission may require sight-blocking or noise mitigating fences for any development it reviews.
- E. Fences of up to eight feet in height are permitted for any development in C-2, C-M, M-1 or M-2, or Planned Unit Development zones.
- F. No fence/wall shall be constructed throughout a subdivision, planned unit development or be part of a project that is/was subject to site and design review approval where the effect or purpose is to wall said project off from the rest of the community unless reviewed and approved by the Planning Commission. (Ord. 890 section 8, 1993; Ord. 740 section 10.3.05(K), 1984; Ord. 955 section 2, 1996; Ord. 981 section 43, 1997)
- G. In all zones, private fences along a public pedestrian/bicycle pathway shall comply with the following in order to provide security and visibility for pathway users while maintaining privacy for the residence.
 - 1. Fencing installed as part of a new subdivision shall comply with either (a) or (b) below.
 - 2. Fencing installed by a property owner on an individual lot shall comply with either (a), (b), or (c) below.
 - i. Solid fencing shall be no greater than four (4) feet in height; or
 - ii. Fencing shall be constructed with black open wire material, wooden slats, or some other material that allows visual access between the pathway and adjacent uses; or
 - iii. Solid fencing shall be set back at least three (3) feet from the property line that abuts the pathway.
- H. Use of hazardous materials. Fences and walls shall not be constructed of or contain any material which will do bodily harm, such as electric or barbed wire, razor wire, broken glass, spikes, or any other hazardous or dangerous material, except as follows:
 - 1. Barbed wire or electrified fences enclosing livestock are permitted in any zone permitting farm use. Electrified fences shall be posted or flagged at not less than 25-foot intervals with clearly visible warnings of the hazard when adjacent to developed areas.
 - 2. In commercial and industrial zones barbed wire is permitted attached to the top of a fence that is at least six foot in height above grade; provided, that barbed wire shall not extend over a street, sidewalk, alley or roadway. The attached barbed wire shall be placed at least six inches above the top of the fence. (Ord. 890 section 8, 1993; Ord. 740 section 10.3.05(K), 1984; Ord. 955 section 2, 1996; Ord. 981 section 43, 1997; Ord. 1338, 2010; Ord. 1514, 2019)

Analysis

Changing provisions A and B, as identified above, would add clarity to the City's fence code and address comments and complaints received by Planning Staff. Code options for A and B are identified below:

Option 1 – Retain Current Code Language

- A. Fences not more than three and one-half feet in height may be constructed within the street setbacks of any R-1, R-1.5, R-2 or C-1 zone. Fences not more than six feet in height may be constructed in any interior yard, rear yard, or street yard along an alley; provided, however, that in no case shall a fence be constructed in violation of the requirements of a vision clearance area.
- B. On corner lots, the 3.5-foot height limit will apply within the required setback along both street-facing yards.

Option 2 – Allow Residents to Fully Enclose Their Back Yards (via minor edits)

- A. Fences not more than three and one-half feet in height may be constructed within the **front** street setbacks of any R-1, R-1.5, R-2 or C-1 zone. Fences not more than six feet in height may be constructed in any interior yard, rear yard, or street yard along an alley; provided, however, that in no case shall a fence be constructed in violation of the requirements of a vision clearance area.
- ~~B. On corner lots, the 3.5-foot height limit will apply within the required setback along both street-facing yards.~~

Option 3 – Allow Residents to Fully Enclose Their Back Yards (restructured code)

- A. Fences in the R-1, R-1.5, R-2, and C-1 zones shall be constructed consistent with following development standards:
1. Fences may not be taller than six feet in height in any location or condition.
 2. Fences in rear and side yard setbacks may be up to six feet in height (including adjacent to alleys, abutting properties, and streets), except where the side yard setback overlaps with the front yard setback (on both corner and non-corner lots).

[Optional language: Fences in corner lot side yards must be set back X feet from the back of sidewalk.] [Optional language: Fences adjacent to alleys must be set back X feet from the alley.]
 3. Fences in all front yard setbacks may not exceed three and one-half feet.

[Alternative language: Fences may not exceed three and one-half feet in the area between the front building façade and the public right-of-way.]
 4. In no case shall a fence be constructed in violation of the requirements of a vision clearance area.

These options are not exhaustive but are identified here to facilitate conversation in the Planning Commission work session. Because all of the above options result in positives and negatives, Planning Staff do not endorse a particular code option for provisions A and B at this time.

Three graphics from Work Session #3 are included below for reference. Figures 1 and 2 show what is currently allowed on corner lots, with all “street yards” requiring shorter fences.

Figure 1 – Current limitations on enclosing back yards (1 of 2).

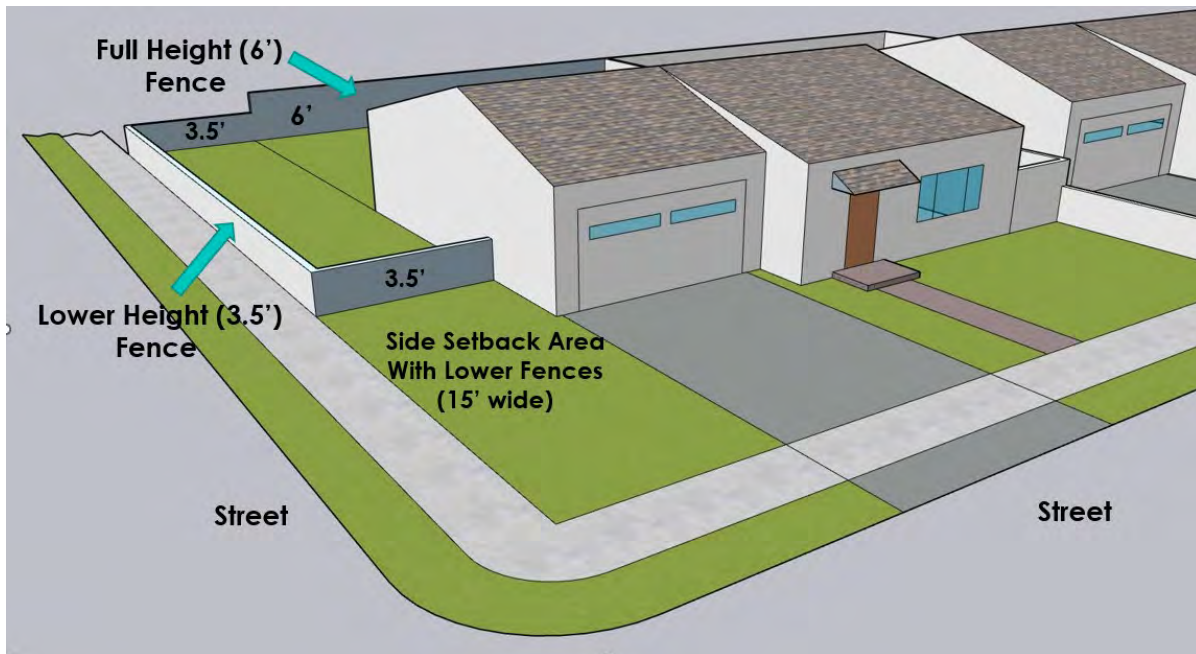


Figure 2 – Current limitations on enclosing back yards (2 of 2).

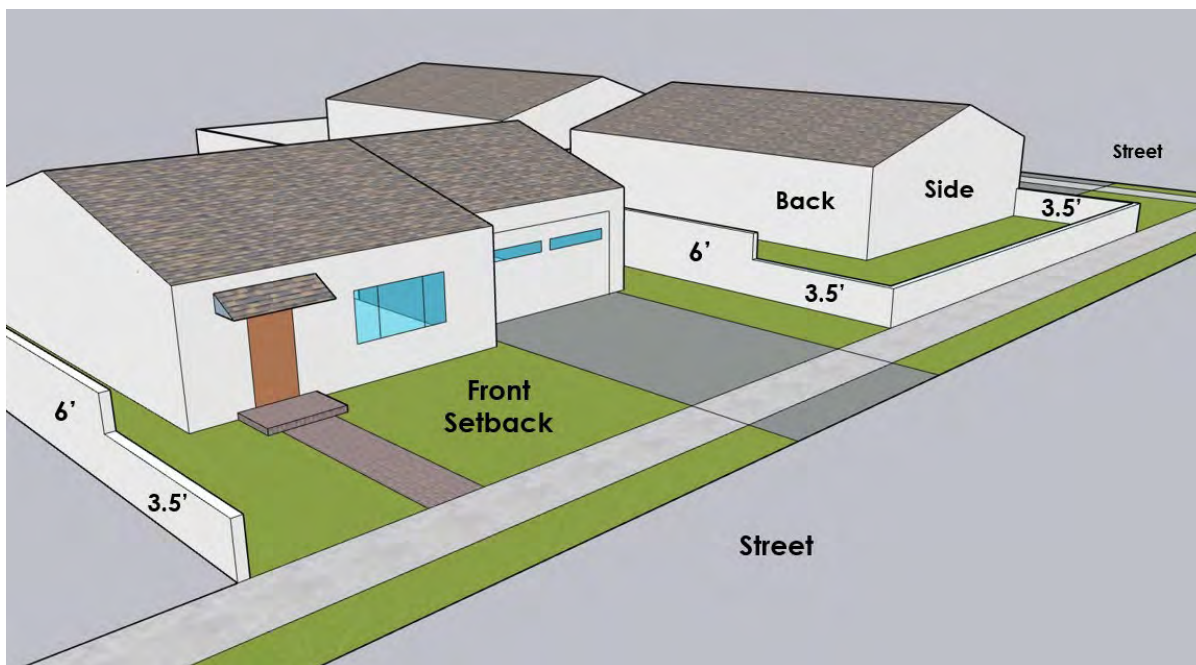
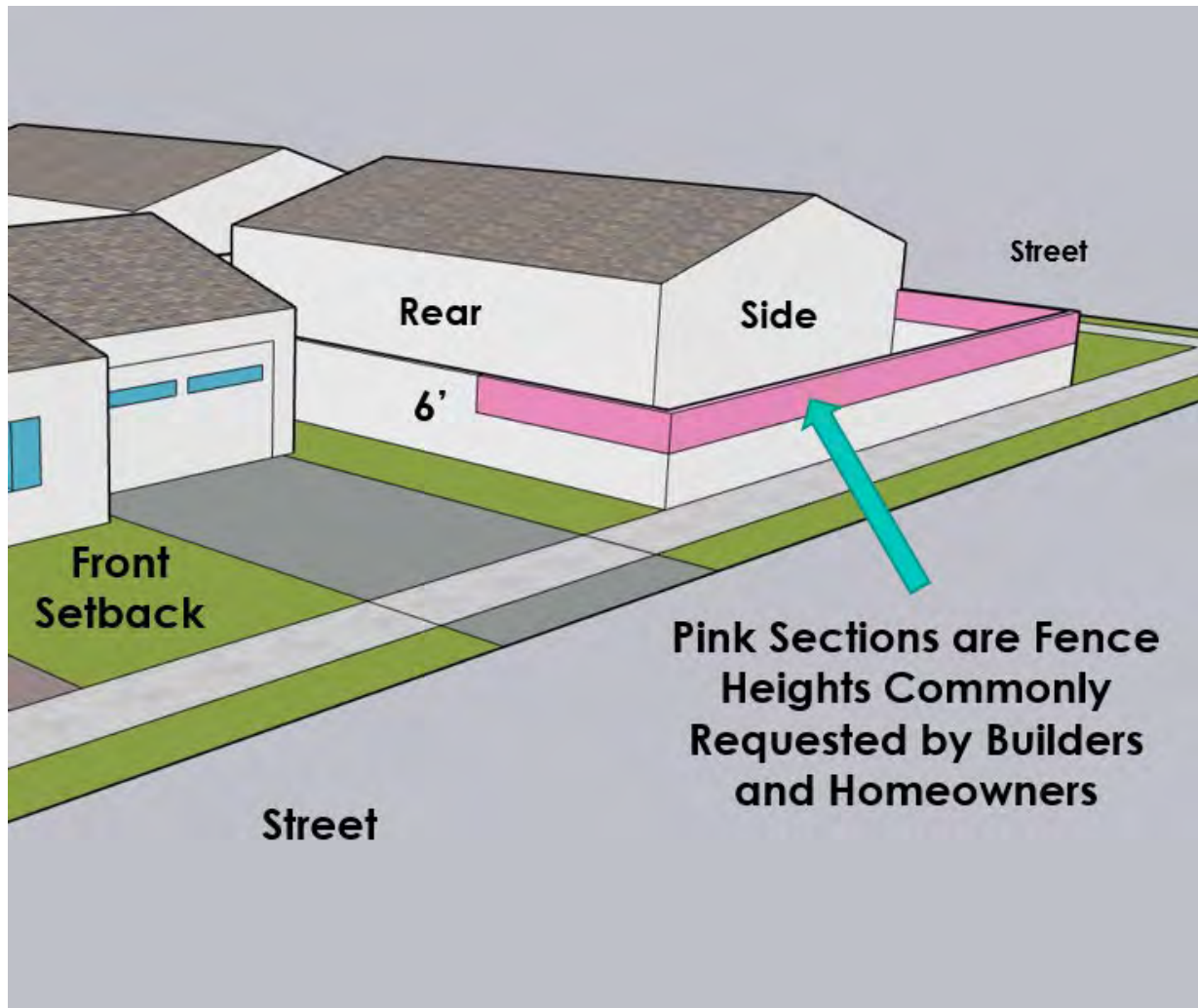


Figure 3 shows what many homeowners, builders, and developers have requested, which is corner lot back yards that have full-height (six feet) fences that wrap around into the street-facing side yard. Note that the viewer is looking at the back of a home whose “front” is facing the back of the graphic. Also note that if this home had a mirrored row of houses behind it, the pink fence would presumably be twice as long along the side-street sidewalk.

Figure 3 – More permissive back/side yard fencing.



Staff Recommendation

Planning Staff recommend that the Planning Commission continue to contemplate changes to the City's fence code as Staff work on additional code language.

Attachments

- Planning Commission Memo from July 11, 2022.

Work Session #4

Residential Fence Standards

Ryan Potter, AICP, Planning Manager

Planning Commission – April 8, 2024

Slide 1 of 13

1

Outline of Presentation

1. Recap of Previous Work Sessions
2. Separation of Topic into Three Parts
3. Fences in Corner Lot Side Yards
4. Next steps



Slide 2 of 13

2

Recap of Previous Work Sessions

Session #1

1. Purpose/need
2. What the code requires
3. Examples of code-compliant fences
4. Design principles
5. Fence violations including examples
6. Pros/cons

Session #2

1. Recap
2. Summary of PC Comments/Discussion
3. C of O Question
4. Fence Standards in Nearby Cities

Session #3

1. Recap
2. Three-dimensional models

Slide 3 of 13

3

Fence Code In Three “Buckets”

Bucket 1	Bucket 2	Bucket 3
Fences for Typical Residential Yards	Fences for Special Conditions	Enforcement/Processes
<ul style="list-style-type: none"> Fences heights in corner lot side yards Fence heights within front setbacks 	<ul style="list-style-type: none"> Fences that back onto roadways Fences along trails/paths Fences that abut parks Fences separating uses (residential adjacent to nonresidential) Etc. 	<ul style="list-style-type: none"> Proactive vs. reactive enforcement Potential for enforcing vision clearance/sight obstruction/vegetation overgrowth Fence permit vs. no permit Certificate of occupancy oversight

Slide 4 of 13

4

Current Code for “Typical” Residential Lots

Subsection 15.08.110, A-B:

- A. Fences not more than three and one-half feet in height may be constructed within the street setbacks of any R-1, R-1.5, R-2 or C-1 zone. Fences not more than six feet in height may be constructed in any interior yard, rear yard, or street yard along an alley; provided, however, that in no case shall a fence be constructed in violation of the requirements of a vision clearance area.
- B. On corner lots, the 3.5-foot height limit will apply within the required setback along both street-facing yards.

Slide 5 of 13

5

Current Code for “Typical” Residential Lots

Subsection 15.08.110, A-B: [emphasis added]

- A. Fences not more than **three and one-half feet in height may be constructed within the street setbacks** of any R-1, R-1.5, R-2 or C-1 zone. Fences not more than six feet in height may be constructed in any interior yard, rear yard, or street yard along an alley; provided, however, that in no case shall a fence be constructed in violation of the requirements of a vision clearance area.
- B. **On corner lots, the 3.5-foot height limit will apply within the required setback along both street-facing yards.**

Slide 6 of 13

6

Code Options

Option 2 – Allow Residents to Fully Enclose Their Back Yards (via minor edits)

- A. Fences not more than three and one-half feet in height may be constructed within the **front** street setbacks of any R-1, R-1.5, R-2 or C-1 zone. Fences not more than six feet in height may be constructed in any interior yard, rear yard, or street yard along an alley; provided, however, that in no case shall a fence be constructed in violation of the requirements of a vision clearance area.
- ~~B. On corner lots, the 3.5-foot height limit will apply within the required setback along both street-facing yards.~~

Slide 7 of 13

7

Option 3 – Allow Residents to Fully Enclose Their Back Yards (restructured code)

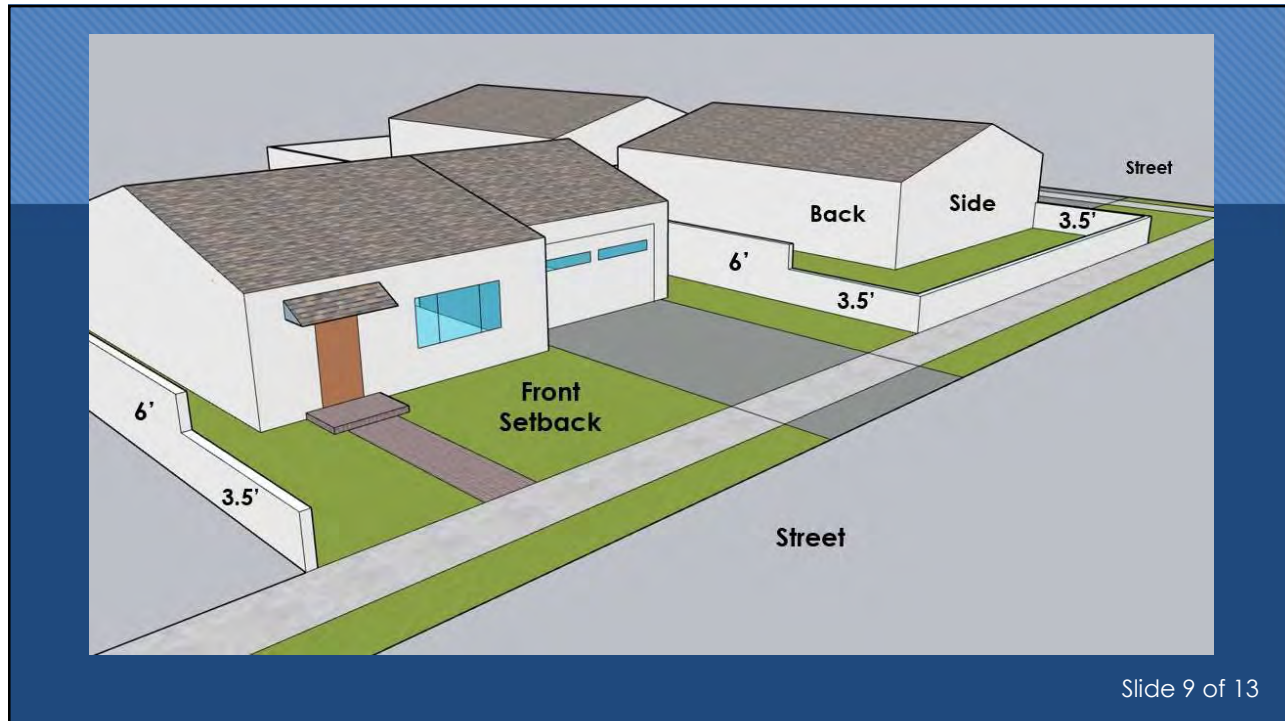
- A. Fences in the R-1, R-1.5, R-2, and C-1 zones shall be constructed consistent with following development standards:
 - 1. Fences may not be taller than six feet in height in any location or condition.
 - 2. Fences in rear and side yard setbacks may be up to six feet in height (including adjacent to alleys, abutting properties, and streets), except where the side yard setback overlaps with the front yard setback (on both corner and non-corner lots).

[Optional language: Fences in corner lot side yards must be set back X feet from the back of sidewalk.] [Optional language: Fences adjacent to alleys must be set back X feet from the alley.]
 - 3. Fences in all front yard setbacks may not exceed three and one-half feet.

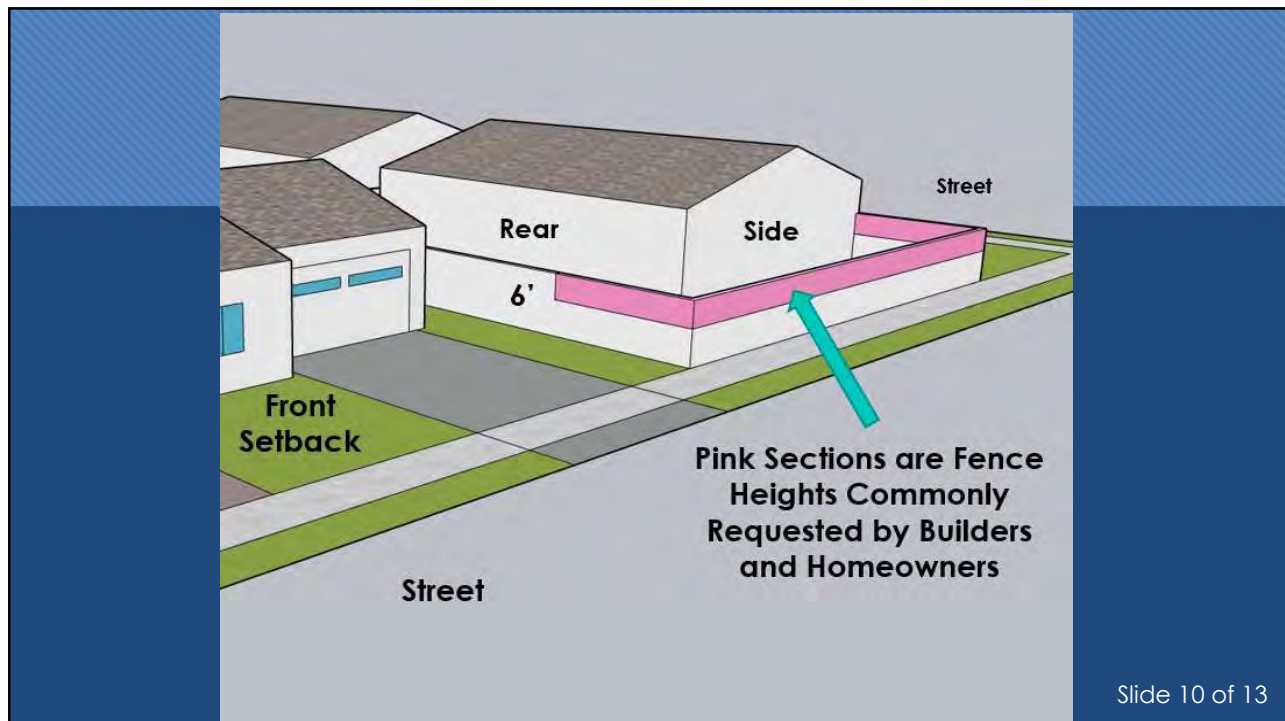
[Alternative language: Fences may not exceed three and one-half feet in the area between the front building façade and the public right-of-way.]
 - 4. In no case shall a fence be constructed in violation of the requirements of a vision clearance area.

Slide 8 of 13

8




9




10

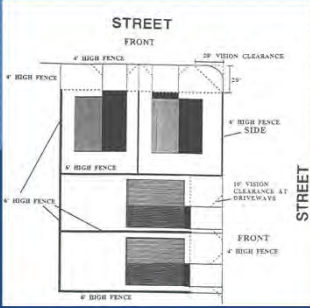
Proposed Code Change



Allowed Currently



Allowed with proposed code language (Options 2 and 3)



City of Wilsonville Code

Slide 11 of 13

11

Proposed Code Change – Aesthetic and Other Impacts




Slide 12 of 13

12

Next Steps

- Staff will work on refining the code language.
- Future work sessions will address Buckets #2 and #3.

Slide 13 of 13

Work Session #5

Fence Standards

Ryan Potter, AICP, Planning Manager

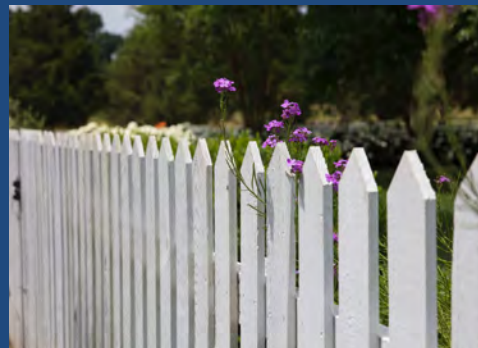
Planning Commission – August 26, 2024

Slide 1 of 23

1

Outline of Presentation

1. Recap of previous work sessions
2. Fences along trails and paths
3. Fences next to parks and streets
4. Other unique fence conditions
5. Next steps



Slide 2 of 23

2

Recap of Previous Work Sessions

Session #1

1. Purpose/need
2. What the code requires
3. Examples of code-compliant fences
4. Design principles
5. Fence violations including examples
6. Pros/cons

Session #2

1. Recap
2. Summary of PC Comments/Discussion
3. C of O Question
4. Fence Standards in Nearby Cities

Session #3

1. Recap
2. Three-dimensional models

Session #4

1. Recap
2. Fences on corner lots

Slide 3 of 23

3

Fence Code In Three “Buckets”

Bucket 1	Bucket 2	Bucket 3
Fences for Typical Residential Yards	Fences for Special Conditions	Enforcement/ Processes
<ul style="list-style-type: none"> • Fences heights in corner lot side yards • Fence heights within front setbacks 	<ul style="list-style-type: none"> • Fences that back onto roadways • Fences along trails/paths • Fences that abut parks • Fences separating uses (residential adjacent to nonresidential) • Etc. 	<ul style="list-style-type: none"> • Proactive vs. reactive enforcement • Potential for enforcing vision clearance/sight obstruction/vegetation overgrowth • Fence permit vs. no permit • Certificate of occupancy oversight

Slide 4 of 23

4

Fence Code In Three “Buckets”

Bucket 1	Bucket 2	Bucket 3
Fences for Typical Residential Yards	Fences for Special Conditions	Enforcement/ Processes
<ul style="list-style-type: none"> Fences heights in corner lot side yards Fence heights within front setbacks 	<ul style="list-style-type: none"> Fences that back onto roadways Fences along trails/paths Fences that abut parks Fences separating uses (residential adjacent to nonresidential) Etc. 	<ul style="list-style-type: none"> Proactive vs. reactive enforcement Potential for enforcing vision clearance/sight obstruction/vegetation overgrowth Fence permit vs. no permit Certificate of occupancy oversight

Session #4

Session #5

Slide 5 of 23

5

Current Code Language

- G. In all zones, private fences along a public pedestrian/bicycle pathway shall comply with the following in order to provide security and visibility for pathway users while maintaining privacy for the residence.
1. Fencing installed as part of a new subdivision shall comply with either (a) or (b) below.
 2. Fencing installed by a property owner on an individual lot shall comply with either (a), (b), or (c) below.
 - a. Solid fencing shall be no greater than four (4) feet in height; or
 - b. Fencing shall be constructed with black open wire material, wooden slats, or some other material that allows visual access between the pathway and adjacent uses; or
 - c. Solid fencing shall be set back at least three (3) feet from the property line that abuts the pathway.

Slide 6 of 23

6

Current Code Language

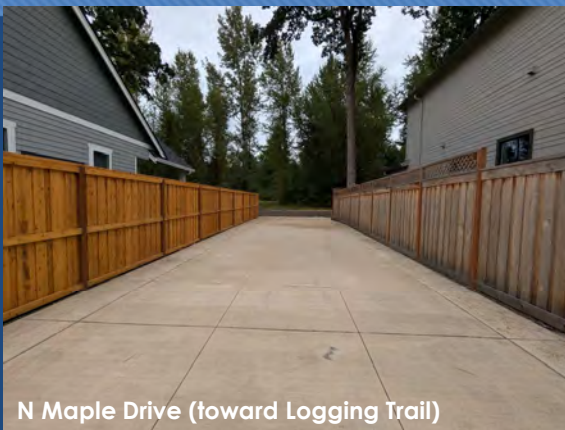
G. In all zones, private fences along a public pedestrian/bicycle pathway shall comply with the following in order to provide security and visibility for pathway users while maintaining privacy for the residence.

1. Fencing installed as part of a new subdivision shall comply with either (a) or (b) below.
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 - a. Solid fencing shall be no greater than four (4) feet in height; or
 - b. Fencing shall be constructed with black open wire material, wooden slats, or some other material that allows visual access between the pathway and adjacent uses; or
 - c. Solid fencing shall be set back at least three (3) feet from the property line that abuts the pathway.

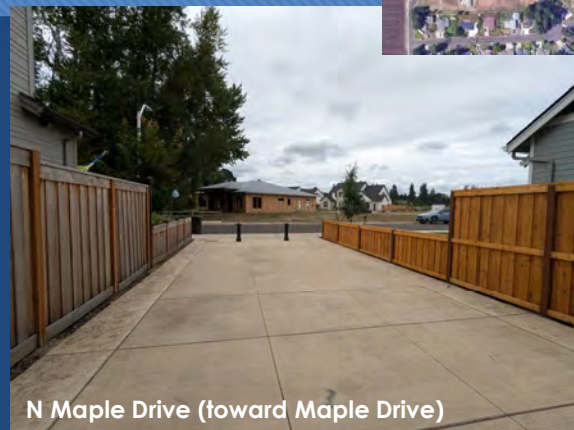
Slide 7 of 23

7

Existing Fences Adjacent to Paths



N Maple Drive (toward Logging Trail)

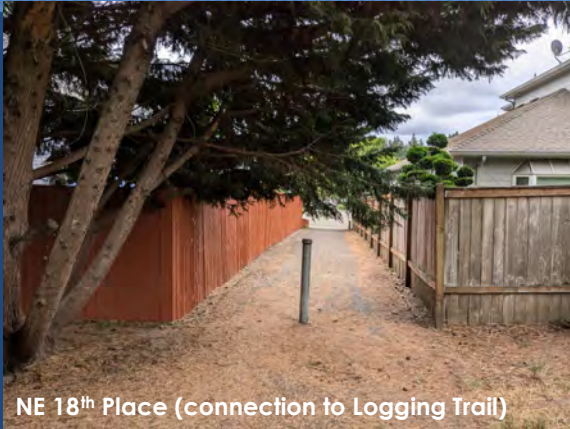


N Maple Drive (toward Maple Drive)

Slide 8 of 23

8

Existing Fences Adjacent to Paths



NE 18th Place (connection to Logging Trail)



N Ponderosa Street (connection to Logging Trail)

Slide 9 of 20

9

Existing Fences Adjacent to Parks



SE 10th Avenue (toward Ackerman fields)

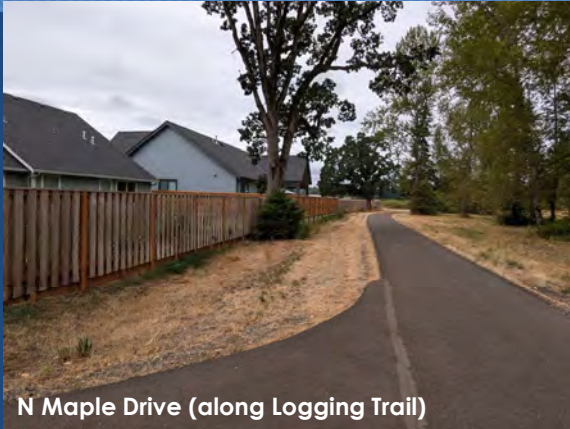


SE 10th Avenue (toward neighborhood)

Slide 10 of 23

10

Existing Fences Adjacent to Paths



N Maple Drive (along Logging Trail)



N Maple Drive (intersection with Logging Trail)

Slide 11 of 23

11

Step-Down Fences Next to Paths



Slide 12 of 23

12

Current Code Language

F. No fence/wall shall be constructed throughout a subdivision, planned unit development or be part of a project that is/was subject to site and design review approval where the effect or purpose is to wall said project off from the rest of the community unless reviewed and approved by the Planning Commission. (Ord. 890 section 8, 1993; Ord. 740 section 10.3.05(K), 1984; Ord. 955 section 2, 1996; Ord. 981 section 43, 1997)

Slide 13 of 23

13

Existing Fences Adjacent to Parks



Northwood Park




Northwoods Park


Slide 14 of 23

14


Existing Fences Adjacent to Parks



Ivy Ridge Estates (future park)



Ivy Ridge Estates (future park)



Slide 15 of 23

15

Existing Fences Adjacent to Parks



Legacy Park



Maple Street Park





Slide 16 of 23

16

Fences Along Major Streets



SE 13th Avenue (Tofte Farms)



Legacy Park and SE 13th Avenue

Slide 17 of 23

17

Fences Along Major Streets



N Holly Street



N Holly Street (Dodd's Farm)

Slide 18 of 23

18

Fences That Back Against Streets



Slide 19 of 23

19

Discussion / Central Issues

- Privacy vs. inviting pedestrian environment
- Character of public spaces
- Creating more clarity in code
- Filling in gaps where code is silent

Slide 20 of 23

20

Current Code Language – Nonresidential

General Fence Standards for Nonresidential (outside of C-1)

- E. Fences of up to eight feet in height are permitted for any development in C-2, C-M, M-1 or M-2, or Planned Unit Development zones.

Industrial Park Overlay

- D. Open storage or "laydown yards" shall be screened by a six foot site-obscuring fence or hedge-type vegetation that would become a solid site obscuring barrier within three years of planting. (Ord. 1008 section 1[part], 1998; Ord. 1237, 2007; Ord. 1299, 2008; Ord. 1514, 2019)

Slide 21 of 23

21

Next Steps

- Staff will write new/revised code language.
- Staff will bring fence code revisions to Planning Commission for a recommendation.
- Proposed code changes will go to City Council for adoption.

Slide 22 of 23

22

Fence Code In Three “Buckets”

Bucket 1	Bucket 2	Bucket 3
Fences for Typical Residential Yards	Fences for Special Conditions	Enforcement/ Processes
<ul style="list-style-type: none"> • Fences heights in corner lot side yards • Fence heights within front setbacks 	<ul style="list-style-type: none"> • Fences that back onto roadways • Fences along trails/paths • Fences that abut parks • Fences separating uses (residential adjacent to nonresidential) • Etc. 	<ul style="list-style-type: none"> • Proactive vs. reactive enforcement • Potential for enforcing vision clearance/sight obstruction/vegetation overgrowth • Fence permit vs. no permit • Certificate of occupancy oversight

Slide 23 of 23

23

Thanks!

24

Work Session #6

Fence Standards

Ryan Potter, AICP, Planning Manager

Planning Commission – April 14, 2025

Slide 1 of 13

1

Recap of Previous Work Sessions

Session #1

1. Purpose/need
2. What the code requires
3. Examples of code-compliant fences
4. Design principles
5. Fence violations including examples
6. Pros/cons

Session #2

1. Recap
2. Summary of PC Comments/Discussion
3. C of O Question
4. Fence Standards in Nearby Cities

Session #3

1. Recap
2. Three-dimensional models

Session #4

1. Recap
2. Fences on corner lots

Session #5

1. Recap
2. Fences in non-standard conditions

Slide 2 of 13

2

Proposed Fence Code Text **Intro/Vision Clearance**

16.08.110 Fences.

The City's fence code is intended to balance privacy with safety and aesthetic considerations.

Staff Comment: This addition is meant to establish the foundational principle of the fence code.

- A. In no case shall a fence be constructed in the vision clearance triangle of a street, alley, or pedestrian/bicycle pathway. This applies in all zones and in all lot configurations. As defined in Chapter 16.04, vision clearance triangles must be free of obstructions between two and one-half feet and ten feet in height.

Staff Comment: This was added up front to emphasize that the vision clearance concept applies everywhere, which is something Planning Commission advocated for in their feedback.

Slide 3 of 13

3

Proposed Fence Code Text **Normal Residential Lots**

- B. Fences not more than three and one-half feet in height may be constructed within the front street setbacks of any R-1, R-1.5, R-2 or C-1 zone. Fences not more than six feet in height may be constructed in any interior yard, rear yard, or ~~street yard~~ along an alley; ~~provided, however, that in no case shall a fence be constructed in violation of the requirements of a vision clearance area.~~

Staff Comment: This was reworded consistent with our proposal to be more permissive in street-adjacent side yards (see (C) below). The vision clearance language was moved to its own provision (see (A) above).

Slide 4 of 13

4

Proposed Fence Code Text **Corner Lots**

- C. On corner lots, fences may be constructed up to six feet in height along the secondary street frontage in the side yard setback (i.e., in the street-adjacent side yard), except where the side setback overlaps the lot's front setback. As with all fences within the front setback, fences that continue into the front setback must then step down to a maximum of three and a half feet. ~~the 3.5-foot height limit will apply within the required setback along both street-facing yards.~~

Staff Comment: This provision was the primary driver for us changing the fence code. Due to homeowner feedback, we are proposing to allow six-foot fences to wrap around into the street-adjacent side yard on corner lots, up to the front yard setback. This allows people to "box in" their back yards more easily. Right now, the fence either has to be low or pushed back to the setback line near the main structure.

Slide 5 of 13

5

Proposed Fence Code Text **Through Lots/Double Fences**

- D. On lots where a rear yard abuts a public street or alley (such as "through lots" as defined in Chapter 16.04), rear yard fences may be constructed up to six feet in height.

Staff Comment: This new bullet aims to address a condition for which the existing code is silent. In practice, most new subdivisions already place full-height fences along rear yards where they back onto streets (e.g., at the edge of new neighborhoods).

- E. No more than one row of fencing is allowed within a required street yard setback.

Staff Comment: Planning Staff are open to discussing this provision. The reason(s) for prohibiting redundant layers of fencing is not stated in the existing code.

Slide 6 of 13

6

Proposed Fence Code Text Mitigation Fences/PUDs

- F. The Planning Commission may require sight-blocking or noise mitigating fences for any development it reviews. Any such requirement shall be tied to a specific adverse impact caused by the project and not required purely for aesthetic reasons.

Staff Comment: Language was added to this provision to add clarity and purpose.

- G. Fences of up to eight feet in height are permitted for any development in C-2, C-M, M-1 or M-2, ~~or Planned Unit Development~~ zones.

Staff Comment: Planning Unit Developments were removed from this provision since PUDs are often residential neighborhoods, where eight-foot fences are not appropriate. A PUD could propose specific fence heights and include them in the land use approval for the PUD.

Slide 7 of 13

7

- I. In ~~all~~ **R-1, R-1.5, R-2 and C-1** zones, private fences along a public pedestrian/bicycle pathway may be constructed up to six feet in height, except within a 20-foot setback along the street where they must step down to no more than three and one-half feet, as with other fences in those zones. In the C-2, C-M, M-1, and M-2 zones, private fences along public pedestrian pathways may be constructed up to eight feet but may not conflict with vision clearance requirements. ~~shall comply with the following in order to provide security and visibility for pathway users while maintaining privacy for the residence:~~

1. ~~Fencing installed as part of a new subdivision shall comply with either (a) or (b) below:~~
2. ~~Fencing installed by a property owner on an individual lot shall comply with either (a), (b), or (c) below:~~
 - a. ~~Solid fencing shall be no greater than four (4) feet in height; or~~
 - b. ~~Fencing shall be constructed with black open wire material, wooden slats, or some other material that allows visual access between the pathway and adjacent uses; or~~
 - c. ~~Solid fencing shall be set back at least three (3) feet from the property line that abuts the pathway.~~

Staff Comment: This existing code provision was confusing in structure and has been replaced with simpler requirements. The proposed replacement language is more permissive in two ways: a) allowing homeowners to "box in" residential side and back yards with six-foot fences adjacent to pathways, and b) not regulating fence material. Both are a response to comments that Staff have received from the public.

Proposed Fence Code Text Fences Along Paths

Slide 8 of 13

8

Proposed Fence Code Text **Hazardous Materials**

J. Use of hazardous materials. Fences and walls shall not be constructed of or contain any material which will do bodily harm, such as electric or barbed wire, razor wire, broken glass, spikes, or any other hazardous or dangerous material, except as follows:

- ~~1. Barbed wire or electrified fences enclosing livestock are permitted in any zone permitting farm use. Electrified fences shall be posted or flagged at not less than 25-foot intervals with clearly visible warnings of the hazard when adjacent to developed areas.~~

Staff Comment: Livestock-based agriculture is not an allowed use in any of the City's zones. Therefore, this provision has no purpose.

2. In commercial and industrial zones barbed wire is permitted attached to the top of a fence that is at least six foot in height above grade; provided, that barbed wire shall not extend over a street, sidewalk, alley or roadway. The attached barbed wire shall be placed at least six inches above the top of the fence. (Ord. 890 section 8, 1993; Ord. 740 section 10.3.05(K), 1984; Ord. 955 section 2, 1996; Ord. 981 section 43, 1997; Ord. 1338, 2010; Ord. 1514, 2019)

Slide 9 of 13

9

Proposed Fence Code Text **Arbors**

16.08.115 Arbors

A. Arbors that are constructed of proper design (height and setbacks) and in accordance with, the design standards of the particular zone where it is located are allowed with the following limitations:

1. Arbors shall be stand-alone structures and shall not be attached to a fence.

Staff Comment: Planning Staff are open to discussing this provision. Staff are unsure why arbors cannot be allowed to be attached to a fence.

2. The arbor shall not exceed eight feet in height and shall maintain a five foot setback from the property line.

Slide 10 of 13

10

Proposed Fence Code Text **Arbors with Vegetation**

3. ~~If the vegetation becomes too full or too high, the owner is financially responsible to rectify the situation, and to maintain the vegetation, and arbor;~~

Staff Comment: This provision was removed because it is too vague and unenforceable. There is no definition given for "too full or too high" and City management of vegetation (which has changing dimensions over time) is not an activity for which resources are available. Furthermore, provisions elsewhere in the code address vision clearance and hazards in the public right-of-way.

4. The primary purpose of the arbor is to support and sustain foliage/vegetation, provide shade, recreational space, and ~~ascetic~~ **aesthetic** amenity. (Ord. 1514, 2019)

Staff Comment: This Scribner's error regarding word choice was fixed to match the intended meaning.

Slide 11 of 13

11

Proposed Fence Code Text **Industrial Park Overlay**

From Chapter 16.35 (no change proposed):

- O. Open storage or "laydown yards" shall be screened by a six foot site-obscuring fence or hedge-type vegetation that would become a solid site obscuring barrier within three years of planting. (Ord. 1008 section 1[part], 1998; Ord. 1237, 2007; Ord. 1299, 2008; Ord. 1514, 2019)

Slide 12 of 13

12

Next Steps

- Staff will bring a formal text amendment to Planning Commission for a recommendation.
- The TA will go to City Council for adoption.

Slide 13 of 13

13

Public Hearing TA 25-02 – Fence Standards

Ryan Potter, AICP, Planning Manager

Planning Commission – August 11, 2025

Slide 1 of 8

1

Recap of Work Sessions



Session #1

1. Purpose/need
2. What the code requires
3. Examples of code-compliant fences
4. Design principles
5. Fence violations including examples
6. Pros/cons

Session #2

1. Recap
2. Summary of PC Comments/Discussion
3. C of O Question
4. Fence Standards in Nearby Cities

Session #3

1. Recap
2. Three-dimensional models

Session #4

1. Recap
2. Fences on corner lots

Session #5

1. Recap
2. Fences in non-standard conditions

Session #6

1. Draft Code Text

Slide 2 of 8

2

Current Status and Next Steps

- Staff have prepared draft code changes.
- August 11 – **Planning Commission** Hearing
- August 20 – **City Council** Hearing
- Staff will prepare diagrams and handouts for public use.
- Future: Comprehensive Code Update (planned to begin Winter 2025/2026)



Slide 3 of 8

3

What is proposed?

- Nothing has changed significantly since the last work session.
- Minor edits were made to reflect Commissioner comments.
- The most significant change is still related to corner lot side yards.
- Two definitions were added: "fence" and "fence height"



Slide 4 of 8

4

Approval Criteria – Subsection 16.88.170(D)

In judging whether or not this title should be amended or changed, the Planning commission and City Council shall consider:

1. The **Comprehensive Plan** of the City and the **plans and policies** of the County, State, and local districts, in order to preserve functions and local aspects of land conservation and development;
2. A **public need** for the change;



Slide 5 of 8

5

Approval Criteria – Subsection 16.88.170(D)

3. Whether the proposed change will **serve the public need better** than any other change which might be expected to be made;
4. Whether the change will preserve and protect the **health, safety and general welfare** of the residents in the community;
5. Statewide **planning goals**.



Slide 6 of 8

6

Options

1. Recommend approval of TA 25-02 as written.
2. Recommend approval of TA 25-02 with changes.
3. Recommend that Council not approve TA 25-02.



Slide 7 of 8

7

Recommendation



- Staff recommend that the Planning Commission forward a **recommendation of approval** to City Council related to text amendment TA 25-02.

Slide 8 of 8

8



NOTICE OF PUBLIC HEARING

CITY OF CANBY

This Public Hearing Notice is to inform you of the opportunity to comment on text amendment TA 25-02, City of Canby Fence Code Amendment, which would revise Chapter 16.08 of the Canby Municipal Code. The City Council Public Hearing is scheduled for Wednesday, August 20, 2025, at 7 pm, in the City Council Chambers, 222 NE 2nd Ave, Canby, OR 97013. City staff seek City Council approval to adopt the recommendation of the Planning Commission.

The public can register to attend the meeting virtually by contacting the Deputy City Recorder at ridgleyt@canbyoregon.gov or call 503-266-0637. Please email your comments to PublicComments@canbyoregon.gov no later than **3 pm on Wednesday, August 20, 2025**.

A staff report and more information are available on the City Council webpage: https://www.canbyoregon.gov/meetings?field_microsite_tid_1=27

Canby Planning Department
222 NE 2nd Avenue - 503-266-7001

Please publish in the Canby Herald on Wednesday, August 13, 2025
Sent to the Canby Herald on Friday, August 8, 2025.

Email Public Notices to: mcaplan@pamplinmedia.com

Please send proof and charge to Account 100-103-419-6100.

If you have questions, please contact Emily Sasse at 503-266-0684 or by email sassee@canbyoregon.gov.



CITY COUNCIL Staff Report

Meeting Date: 9/3/2025

To: The Honorable Mayor Hodson & City Council
Thru: Randy Ealy, Interim City Administrator
From: Eric Laitinen, Aquatic Program Manager
Agenda Item: Consider **Ordinance No. 1656**: An Ordinance Authorizing the Interim City Administrator to Execute a Contract with Scott Edwards Architecture LLP in the Amount of \$165,750 for the Design Development, Permitting, Bidding, and Construction Administration for the Remodel of the Canby Swim Center. (*Second Reading*)
Goal:
Objective:

Summary

The City Council will consider Ordinance No. 1655, authorizing the contract with Scott Edwards Architecture LLP (SEA) in the amount of \$165,750 for the design development, permitting, bidding, and construction administration for the remodel of the Canby Swim Center.

Background

The Canby Swim Center is located at 1150 S Ivy Street. The facility is 55 years old and has aging infrastructure that needs to be addressed. The Swim Center was evaluated by Scott Edwards Architecture in 2020, and the firm has shared their findings with the city.

During the October 9, 2024, City Council work session, Swim Center staff was directed to work with Scott Edwards Architecture to confirm and update the estimate for the remodel. Since the work session, Scott Edwards Architecture has confirmed the numbers previously provided are still accurate. The renovation will upgrade the entryway, lobby, offices, locker rooms, and restrooms, and create a family changing room. The Swim Center has \$750,000 approved in the FY 2026 budget allocated to this project for the upgrades.

Discussion

The City Council will receive a presentation on the proposed remodel of the Canby Swim Center. The remodel will replace the current staff area with a family changing room, and upgrade the entryway, lobby, offices, locker rooms, and restrooms. SEA will also oversee permitting, bidding, and construction administration for the project. Construction is expected to take place in August 2026.

Attachments

- Ordinance No. 1656
- Proposal Exhibit A
- Personal Services Agreement

Fiscal Impact

The Canby Swim Center has \$750,000 budgeted for improvements for the facility.

Options

1. Remodel the Canby Swim Center's entryway, lobby, offices, locker rooms, and restrooms, and replace current staff area with a family changing room.
2. Do not remodel the Canby Swim Center's entryway, lobby, offices, locker rooms, and restrooms, and replace the current staff area with a family changing room.

Recommendation

Staff recommends the City Council authorize the contract with Scott Edwards Architecture LLP to upgrade the dressing room and fixtures, repair the bathroom infrastructure, and add a family-changing area.

Proposed Motion

"I move to adopt **Ordinance No. 1656**: Authorizing the Interim City Administrator to Execute a Contract with Scott Edwards Architecture LLP in the Amount of \$165,750 for the design development, permitting, bidding, and construction administration for the remodel of the Canby Swim Center."

ORDINANCE NO. 1656

AN ORDINANCE AUTHORIZING THE INTERIM CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH SCOTT EDWARDS ARCHITECTURE LLP IN THE AMOUNT OF \$165,750 FOR THE DESIGN DEVELOPMENT, PERMITTING, BIDDING, AND CONSTRUCTION ADMINISTRATION FOR THE REMODEL OF THE CANBY SWIM CENTER.

WHEREAS, the City of Canby has heretofore informally advertised and received three (3) bid responses to an informal solicitation for the development of a design for the Canby Swim Center Project;

WHEREAS, the City of Canby acknowledges the Canby Swim Center is in need of upgrades to continue to serve the community and visitors to the facility;

WHEREAS, the notice of bids was provided June 20, 2025;

WHEREAS, bids were received by July 11, 2025, and reviewed by the City of Canby Staff;

WHEREAS, Scott Edwards Architecture has already done much of the preliminary work and provided the City of Canby several options and therefore was selected in the best interest of the City to continue the project.

NOW, THEREFORE, THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The Interim City Administrator is hereby authorized, on behalf of the City of Canby, to enter into the contract with Scott Edwards Architecture LLP in an amount not to exceed \$165,750 for the remodel design development, permitting, bidding, and construction administration at the Canby Swim Center.

Section 2. The effective date of this Ordinance shall be October 3, 2025.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, August 20, 2025, ordered posted as required by the Canby City Charter; and scheduled for second reading on September 3, 2025, commencing at the hour of 7:00 PM in the Council Chambers located at 222 NE 2nd Avenue, 1st Floor, Canby, Oregon.

Maya Benham, CMC
City Recorder

PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on September 3, 2025, by the following vote:

YEAS_____ NAYS_____

Brian Hodson
Mayor

ATTEST:

Maya Benham, CMC
City Recorder

August 12, 2025 Rev 2

Eric Laitinen
Canby Swim Center
LaitinenE@canbyoregon.gov

RE : PROPOSAL FOR DESIGN SERVICES FOR CANBY SWIM CENTER REMODEL, CANBY OREGON

Dear Eric,

Scott Edwards Architecture, LLP (SEA) is pleased to provide this proposal for design services for the Canby Swim Center Remodel located in Canby, OR. We look forward to working with you towards the success of this project.

PROJECT SCOPE

Canby Swim Center, the Owner, has engaged SEA to assist with a remodel of their existing swim center lobby, offices, lockers and restrooms. The address of the swim center is 1150 S Ivy St in Canby, OR. The scope is based on a study put together by SEA in October of 2020, Exhibit 'B'. The previous scope, as outlined in a proposal dated August 26, 2020, also included structural and MEP narratives used to generate initial scope and pricing. Scope of service in this proposal includes Architectural, Interiors, Structural, Civil and MEP services as described below.

(See Exclusions to Scope of Service)

- 01** We understand the City of Canby has a lease agreement with the school district and the building is leased.
 - A** SEA assumes the Owner will advise on key users who will participate in the design process and help inform decisions.
 - B** SEA understands the school district is not a primary stakeholder and any required documentation reviews by the School District will be coordinated by the Owner and communication regarding any feedback will be communicated with SEA in a timely manner.
 - 1. Major modifications to the design after approval of SD Deliverable will be considered an additional service.
- 02** The existing site is approximately 18.55 acres (808,038 SF).
 - A** We understand the scope of work will require accessibility upgrades to the parking and entry per ORS 447.241.
 - 1. Refer to civil scope of work.
 - B** Right of way improvements beyond the scope outlined are not included and assumed to not be required.
- 03** The existing building is an existing approximately 13,000SF swim center. The scope of work in this proposal is limited to the approximately 2,400 SF entry, lobby, offices, locker rooms, and restrooms as outlined in Exhibit 'B'.
 - A** The original concept and proposal was based on design codes for MEP and building in 2020. Since then, the codes have been updated, and the design team will need to evaluate the scope based on current codes including:

1. OSSC 2022, OEESC 2025, OMSC 2022, OESC 2023, 2023 OPSC, 2017 ICC ANSI 117.1, and City of Canby Municipal Code.
2. We will review any significant implications of the OEESC 2025 code as it was not required to be implemented until July of 2025.
3. We will review the accessibility based on the requirements of ORS 447.241 and advise on recommendations.
 - i. The scope provided assumes updates to the accessibility throughout the area in Exhibit 'B'.

B We understand the scope does not require a change of use or occupancy.

C We understand the building is existing construction and is not sprinklered.

1. The addition of sprinklers is not included in this scope of work.

D We understand the proposed scope includes new finishes, casework, and lighting throughout the area in the scope.

E We understand the interior scope includes:

1. Reconfiguration of the existing space in line with Exhibit 'B'.
2. Mechanical, Electrical and Plumbing updates as indicated and described below.

F We understand the exterior scope includes:

1. Painting of the existing building as required.
2. Review of the current accessibility of the parking lot as required by the state code.

04 Base Civil and Land Survey scope of services assumes:

A Land surveying services as outlined below.

1. Scope of service is limited to the accessible parking and route to the entrance and includes the existing walkway.
2. Survey information will include utilities disclosed by standard utility locate request, all visible ground utility features on the property, and all existing visible ground improvements and grades as needed to prepare base map.

B Civil Engineering Services as outlined below.

1. Prepare Existing Conditions and Demo plan at location where addition and scope is proposed.
2. Design and prepare civil plans including construction of an Accessible sidewalk connection from the parking stalls to the new entry vestibule, new accessible parking stalls, signage and striping.
3. Design and prepare plans for site grading and erosion control including grading for the areas of improvement and information as required for the County erosion control permit.

C Stormwater management requirements will not be triggered by the City of Canby or Clackamas County as the presumed disturbed impervious area will be below 5,000SF.

D All existing site utilities (water, sanitary, gas, electrical, etc.) are adequate, not impacted and not re-designed with this project.

05 Base structural scope of service assumes:

A The locker room remodel includes the demolition of non-structural CMU wall(s), addition of interior non-structural CMU walls, and new slab trenching for relocated plumbing only.

1. It is assumed the extent of new walls and modifications will not trigger global seismic improvements.

B New roof top units may need to be installed.

1. It is assumed a mechanical screen will not need to be provided.

06 Base Mechanical and Plumbing scope of service assumes:

A Heating, ventilating and air conditioning system design as outlined below.

1. Air conditioning and heating systems design.

2. Space heating and ventilation design for areas not requiring air conditioning.
3. Building exhaust systems design.
4. Performance specifications for temperature control or building energy management system.
5. Heating and cooling load calculations.
6. State Energy Code calculations for building mechanical systems.
7. Demolition drawings will be provided in schematic format only.

B Plumbing systems design as outlined below.

1. Sanitary drainage, vent domestic water, storm water, and natural gas piping design from 5 feet outside the building.
2. Plumbing fixture specifications.

C Mechanical Investigation as outlined below.

1. Review of the existing building mechanical and plumbing systems to determine the adequacy and feasibility of reuse and needs for system improvement.

07 Base Electrical, Lighting, and Information and Communications Technology (ICT) scope of service assumes:

A Building power distribution as outlined below.

1. Power distribution design to new loads from existing distribution panels.
2. Design for connection of Owner's equipment based on Owner provided load information.
3. Design emergency power distribution system for emergency loads such as egress lighting utilizing unit battery equipment as the backup source.
4. Design for connection of mechanical, lighting and fire/life safety systems.
5. Demolition drawings will be provided in schematic format only.

B Electrical Engineering Studies as outlined below.

1. Provide preliminary selective coordination analysis for essential branches on the emergency system. Final study to be performed by others.
2. Provide preliminary fault current analysis. Final fault current and arc flash study to be performed by others.

C Electrical investigation as outlined below.

1. Review existing electrical, lighting, and ICT systems to determine the adequacy and feasibility of reuse and needs for system improvement.

D Lighting design services as outlined below.

1. Building interior lighting design including luminaire schedule and cut sheets, layout, and controls.
2. State energy code lighting compliance calculations.
3. Egress lighting design and illuminated exit sign placement per 2022 OSSC requirements.

E Design of the following systems, including construction documents and specifications.

1. Telecommunications system design including:
 - i. Layout of device outlet locations, rack size and layout, cabling design and distribution.
 - ii. Single line diagrams.
 - iii. Technical specifications.
2. Security systems design including:
 - i. Electronic access control entry system.
 - ii. Video surveillance system.
 - iii. Layout of devices
 - iv. Single Line diagrams.
 - v. Technical specifications.
3. It is assumed the existing incoming services have adequate capacity.

- 08** The building is located in the City of Canby and the authority having jurisdiction (AHJ) will be the City of Canby and Clackamas County.
- A** As noted above, SEA will consider required building code within the AHJ as a part of the process outlined above.
 - B** We understand the zoning and use are appropriate for the space and a detailed zoning or code summary are not included in the scope of services.
 - C** The design team has done some initial due-diligence and based on the information found within the City of Canby's Municipal code, the proposed scope assumes the following:
 - 1. Design Review is not required and is not included in the scope.
 - 2. There are no Right of Way scope upgrades or Public Works improvements required.
 - 3. There are no non-conforming upgrades required.
 - 4. If the City determines at a later date any of the above are required, it will require a modification to this proposal.
- 09** We understand a Type 1 Site Plan Review will be required as outlined by the City of Canby Municipal Code.
- 1. The design team will prepare the package to be submitted under this scope.
- 10** Per ORS 358.653, we understand the building requires a consult with SHPO (State Historic Preservation Offices).
- A** The design team will assist in shepherding this through SHPO.
 - 1. We understand following submission the process takes 30 days for review. Per SEA's meeting with the Owner 8/7/25, the submission to SHPO has been made. SEA has reviewed and provided comment for a correction.
 - 2. We understand the process can run concurrent throughout the design process.
 - B** The scope assumes SHPO agrees the project has no effect on a property that is eligible or listed in the National Register.
 - 1. If SHPO disagrees with the finding, we will inform the Owner and outline options and additional scope as required.
- 11** We understand the project delivery method is CMGC and a contractor has not been engaged.
- A** Preliminary pricing done by Triplett Wellman was Pro-Bono and for information only and did not include the selected option, Exhibit 'B'.
 - B** We understand the design team will assist the City as required in reviewing solicitations for a CMGC partner.
- 12** We understand PDF drawing files of the existing building are available for this project from the 1989 build out.
- A** SEA assumes (1) site visit for verifying existing conditions in the area of scope as outlined in Exhibit B.
 - 1. Complete measured drawings are not included in scope.
 - B** As part of the site visit, the design team will review any modifications from the package completed in the 2020 scope of work.
- 13** We Understand the Owner would like to move forward as quickly as possible. Based on current work loads, the design team will require 3 weeks maximum to begin design services following approval of this agreement. SEA is proposing the following timeline for the scope as outlined below:
- A** Entitlements (Type 1 Site plan review and SHPO clearance): Concurrent within phase structure
 - B** Schematic Design: 3 weeks
 - C** Upon Owner approval, begin Design Development Documents: 3 weeks

- D** Upon Owner approval, begin Construction Phase Documents: 3-4 weeks
- E** Permitting: Estimated 4 weeks
- F** Bidding: Estimated 6 weeks
- G** Construction: Estimated 4 months. We understand the Owner does not intend to commence construction until late summer/early fall of 2026.

14 As a signatory of the AIA 2030 Commitment, SEA is committed to reducing the operational and embodied emissions of our projects as well as being mindful of sustainable goals and best practices throughout the project. As such, SEA will consider sustainable opportunities and/or incentives as a part of the proposed scope as is possible.

- A** Establishing sustainability goals, strategies, and priorities to increase the project's energy performance,

15 This proposal includes the following exhibits:

- A** Exhibit 'A' – Terms and Conditions.
- B** Exhibit 'B' – Diagrams.
- C** Exhibit 'C' – Electronic Document Release.

1. Electronic Document Release is provided for reference. Acceptance of this proposal is an acceptance of the terms outlined in the Electronic Document Release.

SCOPE OF SERVICES

The process and deliverables outlined below are based on the Owner's expressed project needs and the Pre-Design Scope. Modifications and/or additions to the scope will be considered and may be subject to additional services, time and materials.

01 PRE-DESIGN

- A** Completed under proposal dated August 26, 2020.

02 ENTITLEMENTS

- A** Site Plan Review.

1. Prepare materials for required Type 1 Site Plan Review including:
 - i. Application.
 - ii. Description of work.
 - iii. Written Statement.
 - iv. Site plans.
 - v. Architectural plans including floor plan, elevation, and demolition plans.
2. The design team recommends submitting the Site Plan review concurrent with the Building Permit.

- B** Oregon SHPO Clearance

1. Assist Owner with SHPO clearance as already submitted.

Deliverables: Prepare materials as described above for Site Plan review.

03 SCHEMATIC DESIGN

- A** Based on selected plan, review for compliance under current set of codes.

1. Scope includes up to (1) Review with Owner to discuss required modifications and impacts based on updated codes.

- B** Attend site walk with Owner and Design Team.
 - 1. Scope does not include a full as-built (measured drawings).
- C** Prepare Schematic design (SD) package including the following.
 - 1. Preliminary site plan.
 - i. Site plan will include land survey information.
 - 2. Floor plan.
 - 3. High-level code summary.
 - 4. Structural narrative and markups as required.
 - 5. MEP narrative and markups as required.
 - 6. It is assumed the deliverables as outlined in the SD package can be used as a basis for the Site Plan Review as described above.
- D** Scope includes (1) additional meeting with Owner to review the SD package for approval.

Deliverables: Schematic Design Package as described above.

04 DESIGN DEVELOPMENT

- A** Provide initial finish materials and casework concepts.
 - 1. Project assumes up to (2) meetings with Owner to review finishes.
 - 2. Project assumes elevations and 3D imagery as required to convey scope.
- B** Based on approved SD package, refine drawings for Design Development (DD) set including:
 - 1. Site Plan.
 - 2. Code summary.
 - 3. Floor plan, reflected ceiling plan and finish plan.
 - i. Reflected ceiling plan to include BOD lighting fixtures.
 - 4. Exterior elevations and materials.
 - 5. Preliminary interior elevations and materials.
 - 6. Custom or unique details.
 - 7. Initial structural Drawings.
 - 8. Initial Mechanical, Electrical and Plumbing Drawings.
 - 9. Refined Civil Drawings.
 - 10. Preliminary custom casework concepts (as required).
- C** Scope includes (1) additional meeting with Owner to review the DD package for approval.
 - 1. Due to the tight timeline, the DD package will serve as the coordination package for all disciplines.
- D** Upon Owner's request, DD package can be sent to Owner's selected CMGC contractor for a refined estimate.
 - 1. The Owner to determine if they would like the design team to pause for pricing following issuance of DD.
- E** Following the submission of the DD package, the design team does not anticipate major scope revisions due to costs.
 - 1. If additional revisions are required, additional fee/time may be required.

Deliverables: DD Package including drawings package as described above.

05 CONSTRUCTION DOCUMENTS

- A** Produce Construction Documents (CDs) including drawings and specifications to describe the project adequately for construction.

1. Coordinate with Owner's independent consultants and, where required, integrate their design into the CDs.
2. Produce project specifications.
3. Produce Comcheck forms as required.

B Scope includes (1) meeting at Owner's request following delivery of package.

1. Scope assumes responding to questions from stakeholders.
2. Scope does not include revisions to drawings following delivery of CD package.

C CD package will be able to serve as Permit Set and Bid Set.

1. Set will be sealed upon Owner's direction that they are ready to submit the documents for Permit.

Deliverables: Provide contract documents, including specifications ready for permitting and pricing.

06 PERMITTING

A Submit for Building Permit.

1. Response to checksheet comments.
2. Architectural fee assumes minor corrections and only one round of corrections are required.

B Submit for Consultant Permits as listed below and where considered separate from the Building Permit.

1. Mechanical.
2. Electrical.
3. Plumbing.

07 BIDDING & NEGOTIATION SERVICES

A Assist the Owner in selecting a CMGC partner (anticipated to occur during the SD phase and be under contract to provide DD pricing).

1. Scope assumes 8 hours of assistance including 1 meeting.

B Following initial pricing, respond to inquiries from Owner's CMGC partner to aid in pricing.

1. Scope assumes 8 hours of assistance including 1 meeting to review.

C During Bidding, respond to questions from contractor.

1. Scope assumes 16 hours of assistance including up to 2 meetings.
2. Scope assumes 1 bid effort and does not include open bid services.

08 CONSTRUCTION PHASE SERVICES

A Work with Owner and Owner's Contractor throughout construction as a representative of the Owner.

B Attend (1) Pre-Construction Meeting.

C Provide on-site construction observation. Assumes site visits once a week for 4 months of construction.

1. Due to the remodel, structural observation may be required if existing conditions onsite are different than assumed. We have provided for (2) site visits. More may require additional services.

D Review Contractor's submittals, including but not limited to product data, shop drawings, bidder design / deferred submittals, and any other data required by the Contract Documents.

1. The design team has assumed one review for each. Major deviations or substitutions are not included in the base fee.

E Review and respond to Requests for Information (RFIs).

F Review any Change Order Proposals (COPs).

G Issue supplemental instructions (ASIs) as required based on document revisions.

H Review completed Work for compliance with the Contract Documents.

1. Includes one walk through at substantial completion.

EXCLUSIONS TO SCOPE OF SERVICE

Optional Services are available upon request.

- 01 Landscape design.
- 02 Fire Suppression design.
- 03 Fire Alarm Design.
- 04 Acoustic design.
- 05 Sustainability services.
- 06 Code Required/ Enhanced Commissioning.
- 07 3rd party fire and life safety review.
- 08 Door hardware selection.
- 09 Fixtures, Furnishings & Equipment [FF&E] selection.
- 10 Signage and/or wayfinding. (code required signage is provided)
- 11 Marketing materials.
- 12 3D graphic renderings or imagery from 3D modeling software.
- 13 Value engineering and revisions to design documents after Design Development phase.
- 14 Construction cost estimating.
- 15 Vending or procurement services.
- 16 Fees to the Authority having Jurisdiction (AHJ) for permitting, construction, or entitlement.
- 17 LUR / HDR/ Design review etc. with AHJ.
- 18 As-built of existing conditions (measured drawings).
- 19 As-built following construction completion.
- 20 Traffic impact study.
- 21 Geotechnical investigations (soils report).
- 22 Infiltration testing.
- 23 Environmental studies.
- 24 Hazardous material assessment and abatement.
- 25 Special testing and inspection required by code during construction.

FEES

We propose to provide the services outlined above on a Time and Materials basis with a not to exceed as outlined. Refer to the Design Fee Overview table below.

SEA STANDARD BILLING SCHEDULE

For additional information on Standard Billing rates, refer to 'Exhibit A' - payment.

Principal	\$225-245	per hour
Project Manager	\$145-200	per hour
Project Architect	\$145-200	per hour
Specification Writer	\$160	per hour
Sustainability Lead	\$165	per hour
Interior Designer	\$115-160	per hour
Designer	\$100-145	per hour

DESIGN FEE OVERVIEW

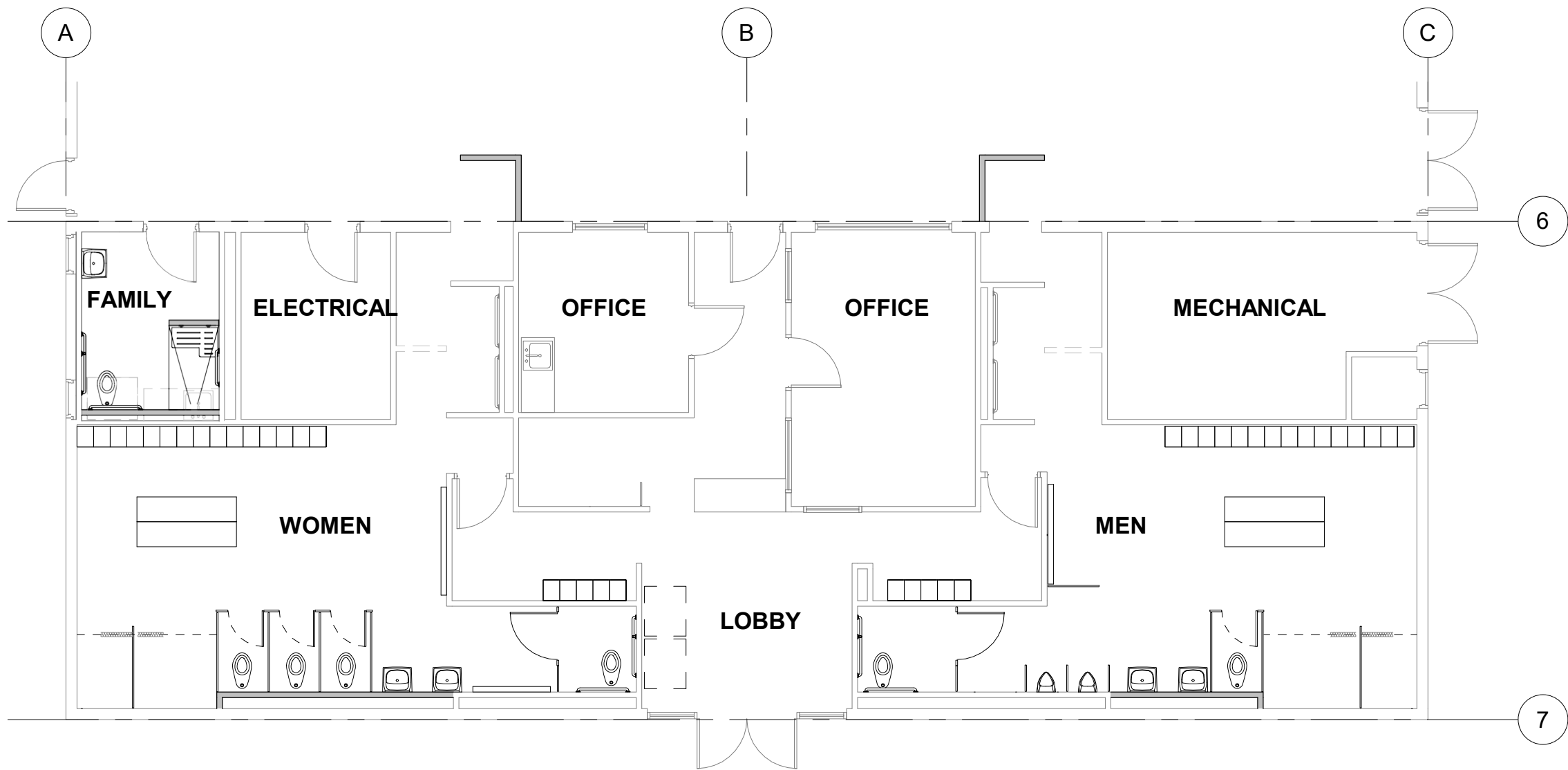
SCOPE OF SERVICE	FEE
ARCHITECTURAL SEA	
Entitlements	\$4,900
Schematic Design	\$8,420
Design Development	\$20,740
Construction Documents	\$33,100
Permitting	\$4,880
Bidding & Negotiation	\$5,760
Construction Phase Services	\$25,300
<i>Subtotal</i>	<i>\$103,100</i>
CONSULTANT	
Civil (HHPR)	\$9,750
Land Survey (HHPR)	\$4,000
MEP (Interface)	\$37,700
Structural (WDY)	\$11,200
<i>Scope includes (2) observations</i>	<i>\$2,400 (included above)</i>
<i>Subtotal</i>	<i>\$62,650</i>
TOTAL	\$165,750

REIMBURSABLE EXPENSES

Reprographics, including printing, plotting, etc., shipping, travel, long distance communication and fees paid on your behalf are billed at 1.10 times direct expense in addition to professional fees.

ADDITIONAL SERVICES

Services requested beyond those included in this proposal shall be considered additional services and will be billed at the hourly rates listed above.



Option 1 Features:

- New screen walls to block sight lines into Locker Rooms.
- Removes intermediate wall in shower areas for improved circulation paths between locker rooms and pool deck.
- Extends and modifies existing Locker Room plumbings walls to create additional toilet stalls and fully accessible stall.
- Adds two individual changing rooms in each Locker Room.

CANBY SWIM CENTER

OPTION 1⁺

1150 S Ivy Street
Canby, Oregon
09/29/20 | JOB # 20132



1/8" = 1'-0"



CONSTRUCTION-RELATED PROFESSIONAL SERVICES AGREEMENT

CANBY SWIM CENTER REMODEL, CANBY OREGON

This Agreement is entered into between the City of Canby, a municipal corporation of the State of Oregon (“City”), and Scott Edwards Architecture, an Engineering & Design Firm of the state of OREGON (“Consultant”). This Agreement is made effective as of October 3rd, 2025 (the “Effective Date”). This Agreement may refer to the City and Consultant individually as “Party” or jointly as “Parties.”

RECITALS

WHEREAS, the City requires the services of an Oregon certified professional to provide architectural-related design services for the **CANBY SWIM CENTER REMODEL** project, including design development, permitting, bidding, and construction administration (the “Services”); and

WHEREAS, the City conducted an informal solicitation for the Services, and Consultant responded by submitting a proposal for the Services dated August 12th, 2025 (the “Proposal”); and

WHEREAS, the City duly selected Consultant to provide the Services, which the City Council authorized on October 3rd, 2025; and

WHEREAS, the City desires to contract with the Consultant to provide the Services.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals incorporated by this reference and the mutual promises contained in this Agreement, City and Consultant agree as follows:

1. Term

The term of this Agreement shall be from the Effective Date until not later than June 30th, 2026 unless amended or sooner terminated under the provisions of this Agreement. Passage of the Agreement’s term shall not extinguish, prejudice, or limit either party’s right to enforce this Agreement with respect to any default or defect in performance that has not been corrected.

2. Consultant’s Services

The Consultant’s Services and schedule for performance are set forth in Exhibit A. Any conflict between this Agreement and Consultant’s Proposal shall be resolved first in favor of this Agreement. Consultant will use its best efforts and due diligence in its

performance of the Services and will provide such personnel, materials, supplies, and equipment as are necessary to successfully provide the Services. All Consultant personnel shall be properly trained and fully licensed to undertake any activities pursuant to this Agreement, and Consultant shall have all requisite permits, licenses and other authorizations necessary to provide the Services. Consultant's failure to adhere to the work schedule in Exhibit A is sufficient grounds for the City to terminate this Agreement for breach.

3. Consultant's Identification

Consultant shall furnish to City Consultant's employer identification number, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, Consultant's Social Security number.

4. Compensation

Consultant's fee for completion of all Services will not exceed **\$165,750.00**. Upon completion of any tasks, milestones or other deliverables described in Exhibit A, City agrees to pay Consultant at the times and in the amount(s) set forth in this Agreement and in accordance with Exhibit A.

Consultant shall submit monthly requests for payment to the City for Services performed under this Agreement, and the invoices shall describe the Services performed, by whom it was performed, the number of hours worked, and itemize and explain all expenses for which reimbursement is being claimed. All expenses must be pre-approved in writing by the City. Mileage will be reimbursed for only one vehicle and only at the current in effect IRS rate. Meals will be at the current in effect U.S. General Services Administration (GSA) per diem rate, and hotels and parking will be paid at actual amounts, not to exceed the GSA daily rate. No reimbursement will be made for any alcohol purchases or parking or traffic citations.

The City shall make payments in a timely manner, within thirty (30) days of receipt of a request for payment. Requests for payment received from the Consultant pursuant to this Agreement will be reviewed and approved by the City prior to payment. If the City does not pay within thirty (30) days of receipt of a request for payment that is acceptable to the City, the request for payment shall incur a service charge of 1.5% per month on the unpaid monthly balance.

The City shall not pay compensation for any portion of the Services not performed. Payment shall not be considered acceptance or approval of any Services or waiver of any design defects therein. The compensation contemplated in this Section shall constitute full and complete payment for said Services.

Consultant must promptly pay all sums due to subconsultants for services and reimbursable expenses after receiving payment for those services from City.

5. Project Managers and Notice

The Parties designate the following individuals as their Project Manager, who are designated to send and receive any notices required under this Agreement.

City's Project Manager

Randy Ealy
222 NE 2nd Ave
Canby, OR 97013
e: EalyR@Canbyoregon.gov
p: 503 266 4021

Consultant's Project Manager

Sara Ruzomberka
2525 E. Burnside St.
Portland, OR 97214
e: SRuzomberka@seallp.com
p: 503 226 3617

Each Party shall give the other written notice of any intended change of their Project Manager. Any change to Consultant's Project Manager must be approved by the City, such approval not to be unreasonably withheld.

All notices shall be made in writing and may be given by personal delivery, first class mail or email. Mailed notices shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery.

6. Project Information

Consultant agrees to promptly share all information related to the Services with the City and to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the Services. Consultant shall not provide any information, news, or press releases related to the Services to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of City's Project Manager.

7. Duty to Inform

Consultant shall give prompt written notice to City's Project Manager if, at any time during the performance of this Agreement, Consultant becomes aware of actual or potential problems, faults or defects in the Services, any nonconformity with the Agreement, or with any federal, state, or local law, rule, regulation, decree, or other mandate, or if Consultant has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Consultant shall constitute neither agreement with

nor acquiescence in Consultant's statement or claim and shall not constitute a waiver of any of City's rights.

8. Consultant is Independent Contractor

Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Agreement. Consultant hereby expressly acknowledges and agrees that as an independent contractor, Consultant is not entitled to indemnification by the City or the provision of a defense by the City under the terms of ORS 30.285. This acknowledgment by Consultant shall not affect Consultant's independent ability (or the ability of Consultant's insurer) to assert that the monetary limitations found at ORS 30.272, the immunities listed at ORS 30.265 or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS 30.300).

9. Consultant Representations and Warranties

i. Consultant has the power, authority, ability, skills, and capacity to enter into and perform this Agreement, and when executed and delivered this Agreement shall be a valid and binding obligation of Consultant enforceable in accordance with its terms.

ii. The Consultant is validly organized and exists in good standing under the laws of the State of Oregon and the Consultant is duly qualified, registered or licensed to do business in good standing in the State of Oregon.

iii. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action and do not and will not (a) require any further consent or approval of the board of directors or any shareholders of the Consultant or any other person which has not been obtained or (b) result in a breach of default under the certificate of incorporation or by-laws of the Consultant or any indenture or loan or credit agreement or other material agreement or instrument to which the Consultant is a party or by which the Consultant's properties and assets may be bound or affected. All such consents and approvals are in full force and effect.

iv. Consultant is engaged as an independent contractor and will be responsible for any federal, state or local taxes applicable to any payments made under this Agreement.

v. Consultant is not eligible for any federal social security, unemployment insurance, pension, PERS or workers' compensation benefits from compensation or payments paid to Consultant under this Agreement.

vi. Consultant is not an employee of the City, any special district, local government, the federal government or the State of Oregon.

vii. Consultant has complied and will continue to comply with all Oregon laws applicable to the performance of Consultant's obligations under this Agreement.

viii. Consultant, and Consultant's employees and subconsultants, shall be qualified, professionally competent and duly licensed to perform the work and Services at all times during the term of this Agreement.

ix. The Consultant has inspected the Project site and all of the surrounding locations to the extent necessary to perform the Services.

x. Consultant has the skill and knowledge possessed by well-informed members of its industry, trade or profession and will apply that skill and knowledge with care and diligence to perform the Services under this Agreement in a professional manner and in accordance with standards prevalent in the Consultant's industry, trade or profession under similar conditions and circumstances.

xi. Consultant has read, understands and agrees to be bound by each of the terms and conditions of this Agreement.

xii. Consultant prepared its Proposal for these Services independently from all other proposers, and without collusion, fraud or other dishonesty.

xiii. Any Goods / Items / Equipment / Components / Hardware / Software / Intellectual Property Rights, etc. delivered to or granted to the City under this Agreement, and Consultant's Services rendered in the performance of Consultant's obligations under this Agreement, are provided to the City free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and are free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

xiv. Upon City's request, Consultant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties. The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations and warranties that Consultant provides.

10. Indemnity

i. Unless otherwise limited by ORS 30.140, Consultant shall indemnify and hold the City, its officers, agents, volunteers, and employees harmless from and against any and all claims, actions, proceedings, judgments, losses, injuries, damages, costs, expenses, and liabilities, including court costs and attorney's fees, arising out of, or resulting directly or indirectly from, the professional negligent acts, errors or omissions of Consultant or its subcontractors, subconsultants, suppliers, agents or employees in performance of professional services under this Agreement. Where limited by ORS 30.140, Consultant's duty to defend the City against a claim for professional negligence and relating to the professional services provided by Consultant shall not arise until the Consultant's liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by settlement agreement, and such obligation shall not exceed the proportionate fault of the Consultant.

ii. The Consultant shall indemnify, defend, and hold the City, its officers, agents, volunteers, and employees harmless from and against any and all claims, actions, proceedings, judgments, losses, injuries, damages, costs, expenses, and liabilities, including court costs and attorney's fees, to the extent they arise out of, or result directly or indirectly from, all other negligent acts or omissions of the Consultant, or any of its subcontractors, subconsultants, suppliers, agents or employees arising in connection with the performance of this Agreement that are not otherwise identified in Subsection (a) of this Section.

iii. The obligations of the indemnifications extended by the Consultant to the City shall survive the termination or expiration of this Agreement.

iv. Except to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Consultant or Consultant's agents, representatives, subcontractors or subconsultants, the indemnities in subsection (i) and (ii) do not require Consultant or Consultant's surety (if any) or insurer to indemnify the City for damage arising out of the death or bodily injury to persons or damage to property caused in whole or in part by the negligence of the City.

11. Insurance

Consultant and its subcontractors and subconsultants shall provide the following insurance coverages against any claims that may arise from or relate to the performance of the Services. Consultant and its subcontractors and subconsultants must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Agreement. The City in no way warrants that the limits stated in this section are sufficient to protect the Consultant from the liabilities that might arise out of the performance of the work under this Agreement by Consultant, its agents, representatives, employees, subcontractors or subconsultants, and Consultant may purchase such additional insurance as they determine necessary.

i. Commercial General Liability Insurance:

- a. The policy must be in an occurrence form and include bodily injury, property damage, broad form contractual liability coverage in the following amounts:

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$2,000,000
Each Occurrence	\$2,000,000
- b. The policy shall be endorsed to name the City of Canby and its elected and appointed officials, officers, agents, and employees as an additional insured with respect to liability for bodily injury, property damage, and personal and advertising injury with respect to premises, ongoing operations, products and completed operations, and liability assumed under an insured contract arising out of the activities performed by, or on behalf of, the Consultant related to this Agreement.
- c. The endorsement shall be indicated on the Certificate of Insurance, and there shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City as an additional insured.
- d. The Consultant's insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by the City.

ii. Automobile Insurance:

- a. The policy shall cover bodily injury and property damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Agreement. Automobile Liability coverage shall be written in an amount not less than \$1,000,000 combined single limit.
- b. The policy shall be endorsed to include the City, its elected and appointed officials, officers, agents and employees as an additional insured with respect to liability arising out of the activities performed by, or on behalf of, the Consultant relating to this Agreement.
- c. The City shall be an additional insured to the full limits of liability purchased by the Consultant.

- iii. Workers' Compensation Coverage: Consultant certifies that it has qualified for State of Oregon Workers' Compensation coverage for all Consultant's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier-insured employer as provided by ORS 656.407 or as a self-insured employer. Consultant shall provide to City within ten (10) days after contract award a certificate of insurance

evidencing overage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the Consultant is self-insured. To the extent permitted by law, a waiver of subrogation in favor of the City shall be included in the policy.

- iv. Professional Liability (Errors and Omissions Liability): Consultant shall provide City with evidence of professional errors and omissions liability insurance covering any damages caused by negligent acts, errors, or omissions related to the professional services and performance of duties and responsibilities under this Agreement, in an amount not less than \$2,000,000 combined single limit per occurrence. Consultant may opt to provide a claims-made policy with a combined single limit per claim of not less than \$2,000,000; but in doing so, Consultant warrants that any retroactive date under the policy precedes the effective date of this Agreement and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two years beginning at the time work under this Agreement is completed. Where any subcontractor or subconsultant provides professional services related to this Agreement, they must provide equivalent coverage.
- v. Certificates: Consultant shall furnish the City with certificates evidencing the date, amount, and type of insurance required by this Agreement (ACCORD form or equivalent approved by the City). The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All policies will provide for not less than thirty (30) days' written notice to the City before they may be canceled. Such notice will be mailed and emailed to Brenda Graves Canby City Contracting, GravesB@canbyoregon.gov, and Randy Ealy Interim City Manager, EalyR@canbyoregon.gov. All certificates and any required endorsements are to be received and approved by the City before the work commences. Each insurance policy required by this Agreement must be in effect at or prior to the commencement of the work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of this Agreement.
- vi. Primary Coverage: The coverage provided by insurance required under this Agreement shall be primary and noncontributory, and any other insurance carried by City shall be excess.
- vii. Subcontractors and Subconsultants: Consultant shall require the same insurance requirements from its subcontractors and subconsultants. Consultant's certificates

Construction-Related Personal Services Agreement

shall include all subcontractors and subconsultants as additional insureds under its policies **-OR-** Consultant shall be responsible for ensuring and verifying that all subcontractors and subconsultants have valid and collectible insurance. At any time throughout the term of the Agreement, the City reserves the right to require proof from the Consultant that its subcontractors and subconsultants have insurance coverage. All subcontractors and subconsultants providing services included under this Agreement's Scope of Services are subject to the insurance coverages identified above and must include the City as an additional insured. In certain circumstances, the Consultant may, on behalf of its subcontractors and subconsultants, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Consultant assumes liability for all subcontractors and subconsultants with respect to this Agreement.

- viii. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Oregon and with an "A.M. Best" rating of not less than A- VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.
- ix. Umbrella Insurance/Employee Liability/Other Coverages? An umbrella or excess liability policy may be used to meet the above required limits of insurance, so long as the coverage in the umbrella or excess liability policy is concurrent with and at least as broad as the coverages required in Section 11.

12. Work Product

All work produced by the Consultant is the exclusive property of the City. "Work Product" includes but is not limited to, technical drawings, prints, blueprints, schematics, research, reports, computer programs, manuals, drawings, plans, recordings, photographs, artwork and any data or information in any form. The Consultant and the City intend that such Work Product shall be deemed "work made for hire" of which the City shall be deemed the author. If for any reason, a Work Product is deemed not to be a "work made for hire," the Consultant irrevocably assigns and transfers to the City all right, title and interest in such Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Consultant shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Consultant waives all rights relating to Work Product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. If the Consultant is an architect, the Work Product is the property of the Consultant-Architect, and by executed of this Agreement, the Consultant-Architect grants the City an exclusive an irrevocable license to use that Work Product.

Construction-Related Personal Services Agreement

Notwithstanding the above, all pre-existing trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights of Consultant are and will remain the exclusive property of Consultant.

13. Public Records and Confidentiality

- i. Public Records Requests. Consultant acknowledges that the City is subject to the Oregon Public Records Act and federal law. Third persons may claim that the Consultant Confidential Information that Consultant submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. The City's commitments to maintain certain information confidentially under this Agreement are all subject to the constraints of Oregon and federal laws. All information submitted by Consultant to the City is a public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions for which Consultant requests and meets an exemption from disclosure consistent with federal or Oregon law, in accordance with the process set forth in Section 13.iii. Within the limits and discretion allowed by those laws, the City will make a good faith effort to maintain the confidentiality of information.
- ii. Public Records Retention. The City will retain one (1) copy of any public records for the express purposes of complying with State of Oregon public records and archiving laws.
- iii. Confidentiality.
 - a. Consultant's Confidential Information. During the term of this Agreement, Consultant may disclose to the City certain Consultant confidential information pertaining to Consultant's business ("Consultant Confidential Information"). Consultant shall be required to mark Consultant Confidential Information CONFIDENTIAL with a restrictive legend or similar marking, together with a written statement describing the material which is requested to remain protected from disclosure and the justification for such request. If Consultant Confidential Information is not clearly marked, or the Consultant Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Consultant shall identify the Consultant Confidential Information as confidential at the time of disclosure or within a reasonable time thereafter. This Agreement itself shall not be considered Consultant Confidential Information. Consultant Confidential Information does not include information that (1) is or becomes (other than by disclosure by City) publicly known; (2) is furnished by Consultant to others without restrictions similar to those imposed by this Agreement; (3) is rightfully in City's possession without the obligation of nondisclosure prior to the time of its disclosure

under this Agreement; (4) is obtained from a source other than Consultant without the obligation of confidentiality, (5) is disclosed with the written consent of Consultant, or; (6) is independently developed by employees or agents of City who can be shown to have had no access to the Consultant Confidential Information. Subject to subsection (i) and (ii), the City shall: (1) limit disclosure of Consultant Confidential Information to those directors, elected and appointed officials, employees, contractors and agents of the City who need to know the Consultant Confidential Information in connection with the Services and who have been informed of confidentiality obligations at least as strict as those contained in this Agreement, and (2) exercise reasonable care to protect the confidentiality of the Consultant Confidential Information, at least to the same degree of care as the City employs with respect to protecting its own proprietary and confidential information.

- b. City's Confidential Information. Any and all information that the City provides to Consultant or its employees or agents in the performance of this Agreement that City designates as confidential (either on the document itself or through related correspondence), as well as all reports and other documents and materials that result from Consultant's use of such information and any other Work Product that City designates as confidential, is deemed to be confidential information of City ("City Confidential Information"). City Confidential Information does not include information that (1) is or becomes (other than by disclosure by Consultant) publicly known; (2) is furnished by City to others without restrictions similar to those imposed by this Agreement; (3) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (4) is obtained from a source other than City without the obligation of confidentiality, (5) is disclosed with the written consent of City, or; (6) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.
- c. Consultant shall treat as confidential any City Confidential Information that has been made known or available to Consultant or that Consultant has received, learned, heard or observed; or to which Consultant has had access. Consultant shall use City Confidential Information exclusively for the City's benefit in the performance of this Agreement. Except as may be expressly authorized in writing by the City, in no event shall Consultant publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. Consultant shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees, subcontractors, subconsultants and agents of Consultant who need to know the City Confidential Information in connection with the Services and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Agreement, (2) exercise reasonable care to protect the confidentiality of the City Confidential Information, at least to the same

degree of care as Consultant employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Consultant's possession or custody or under its control. Consultant is expressly restricted from and shall not use the intellectual property rights of the City without the City's prior written consent.

- d. Retroactivity. This Section shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Consultant and related to this Agreement.
- e. Survival. Consultant's confidentiality obligations under this Agreement shall survive termination or expiration of this Agreement.
- f. Equitable Relief. Consultant acknowledges that unauthorized disclosure of City Confidential Information will result in irreparable harm to the City. In the event of a breach or threatened breach of this Agreement, the City may obtain injunctive relief prohibiting the breach, in addition to any other appropriate legal or equitable relief. The Parties agree that, notwithstanding any other section of this Agreement, in the event of a breach or a threatened breach of the Agreement's terms related to Confidential Information or intellectual property rights, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the Parties.
- g. Discovery of Documents. In the event a court of competent jurisdiction orders the release of Confidential Information submitted by one Party, the other Party will notify the Party whose Confidential Information is being requested to be disclosed of the request. The Party receiving the request shall allow the other Party to participate in the response at its own expense. Each Party will comply with any effective court order.

14. Errors

Consultant shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

15. Changes in Work

Only the Interim City Administrator may authorize a change order or extra work. Failure of Consultant to secure written authorization for a change order or extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to

such unauthorized change order or extra work, and Consultant thereafter shall be entitled to no compensation whatsoever for the performance of such work.

16. Early Termination of Agreement

- i. The City may terminate this Agreement for convenience at any time for any reason deemed appropriate in its sole discretion. Termination is effective immediately upon notice of termination given by the City.
- ii. Either party may terminate this Agreement in the event of a material breach by the other party that is not cured. Before termination is permitted, the Party seeking termination shall give the other Party written notice of the breach, its intent to terminate, and thirty (30) calendar days to cure the breach. If the breach is not cured within 30 days, the Party seeking termination may terminate immediately by giving written notice that the Agreement is terminated.

17. Remedies and Payment on Early Termination

- i. If the City terminates pursuant to Section 16(i), the City shall pay the Consultant for Services performed in accordance with the Agreement prior to the termination date. No other costs or loss of anticipated profits shall be paid.
- ii. If the City terminates pursuant to Section 16(ii), the City is entitled all remedies available at law or equity. In addition, Consultant shall pay the City all damages, costs, and sums incurred by the City as a result of the breach.
- iii. If the Consultant justifiably terminates the Agreement pursuant to 16(ii), the Consultant's only remedy is payment for Services performed prior to the termination. No other costs or loss of anticipated profits shall be paid.
- iv. If the City's termination under Section 16(ii) was wrongful, the termination shall be automatically converted to one for convenience, and the Consultant shall be paid as if the Agreement was terminated under Section 16(i).
- v. In the event of early termination, the Consultant's Work Product before the date of termination becomes property of the City.

18. Compliance with Applicable Law

Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation

Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal, state and municipal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.

Certain Oregon laws apply to all public contracts in Oregon. The City's performance under the Agreement is conditioned upon Consultant's compliance with the applicable provisions in Exhibit B – OR Statutorily Required Contract Provisions, which are incorporated herein by this reference.

19. Records and Audits

- i. **Records Retention.** Consultant shall maintain current financial records in accordance with Generally Accepted Accounting Principles (GAAP). Consultant agrees to maintain and retain and retain all financial records, supporting documents, statistical records and all other records pertinent to this Agreement during the term of this Agreement and for a minimum of six (6) years after the expiration or termination date of this Agreement, for a minimum of six (6) years after all other pending matters in connection with this Agreement are closed, whichever is longer.
- ii. **City Audits.** The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and Services at any time in the course of the Agreement and during the records retention period listed above. Audits shall be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States Government Accountability Office.
- iii. **Access to Records.** The City may examine, audit and copy Contractor's books, documents, papers, and records relating to this Agreement at any time during the records retention period listed above upon reasonable notice. Copies of applicable records shall be made available upon request. Access to said documents shall be granted within seven (7) days written notice, or such other earlier time as is reasonable under the circumstances.

20. Law of Oregon

This Agreement is governed by the laws of the State of Oregon without reference to its conflict of laws provisions that might otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this Agreement shall be brought in the appropriate court of Clackamas County, Oregon.

21. Mediation, Trial By Jury, Attorneys' Fees

- i. Should any dispute arise between the Parties to this Agreement it is agreed that such dispute will be submitted to a mediator prior to any litigation, and the Parties hereby expressly agree that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation.
- ii. The Parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both Parties. Mediation will be conducted in Canby, Oregon, unless both Parties agree in writing otherwise. Both Parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a Party requests mediation and the other party fails to respond within ten (10) days, or if the Parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Clackamas County Circuit Court upon the request of either Party.
- iii. Any litigation arising under or as a result of this Agreement shall be tried to the court without a jury.
- iv. In any mediation or litigation arising under this Agreement, each Party shall bear its own fees and costs, including attorney fees.

22. Conflict of Interest

Consultant hereby certifies that it is not a City official/employee or a business with which a City official/employee is associated, and that to the best of its knowledge, Consultant, its employee(s), officer(s) or its director(s) is not a City official/employee or a relative of any City official/employee who: (1) has responsibility in making decisions or ability to influence decision-making on the Agreement or project to which this Agreement pertains; (2) has or will participate in evaluation or management of the Agreement; or (3) has or will have financial benefits in the Agreement. Consultant understands that should it elect to employ any former City official/employee during the term of the Agreement, then that former City official/Consultant employee must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047, and any provisions of the City's Charter, Code, ordinances, or administrative rules.

23. Subcontractors and Subconsultants

The is solely and exclusively responsible to the City for the performance of the Services, notwithstanding any subcontracts that it enters into for the performance of the Services. Consultant shall provide a list of all subcontractors and subconsultants with which Consultant intends to utilize in providing Services. This list shall include such information on their relevant qualifications as may be requested by City. City reserves the right to review and reject the Consultant's use of subcontractors and subconsultants where Owner has a reasonable objection. Consultant shall obtain Owner's written consent prior to entering into any subcontracts for any of the Services required by the Agreement.

24. General Provisions

- i. Successors and Assigns: Each party binds itself, and any partner, successor, executor, administrator or assign to this Agreement.
- ii. Assignment: Consultant shall not assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the City and no assignment shall be of any force or effect whatsoever unless and until the City has so consented. If City agrees to assignment of tasks to a subcontractor or subconsultant, Consultant shall be fully responsible for the acts or omissions of any subcontractors and subconsultants and of all persons employed by them, and neither the approval by City of any subcontractor or subconsultant nor anything contained in this Agreement shall be deemed to create any contractual relation between them and City.
- iii. Severability: In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the Parties when they entered into the Agreement.
- iv. No Third-Party Beneficiaries: Consultant and City are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- v. Non-Discrimination: Each Party agrees not to discriminate on the basis of age, citizenship status, color, familial status, gender identity or expression, marital status, mental disability, national origin, physical disability, race, religion, religious observance, sex, sexual orientation, and source or level of income in the performance of this Agreement.

- vi. Exclusivity: This is not an exclusive contract, and the City retains the right to contract with other entities or contractors for the same or similar goods or services as provided under this Agreement in the City's sole discretion.
- vii. Amendments: Any modification of the provisions of this Agreement shall be reduced to writing and signed by the Parties. Consultant acknowledges that authority for amendments may be subject to the City's ordinance process.
- viii. Integration: This Agreement and attached Exhibits and Attachments constitutes the entire Agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified in this Agreement regarding this Agreement.
- ix. No Waiver: No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given.
- x. Order of Precedence: Should there be any conflict between the terms of this Agreement and the Consultant's proposed contract terms, scope of work, or any other document provided by the Consultant, this Agreement shall control, and nothing in this Agreement shall be considered as an acceptance of any conflicting terms in the Consultant's Proposal.
- xi. Survival: All provisions in this Agreement, which by their nature should remain in effect beyond termination or expiration of this Agreement, will survive until fulfilled.
- xii. Counterparts; Electronic Signatures: The Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute but one and the same Agreement. The City and Consultant may conduct this transaction, including any amendments, by electronic means, including the use of electronic signatures.
- xiii. Independent Legal Review: The Parties, by the signature of their authorized representatives, acknowledge that they have read this Agreement, have performed an independent legal review, understand it, and agree to be bound by its terms and conditions.

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SIGNATURE PAGE

IN WITNESS HEREOF, the Parties hereby cause this Agreement to be executed.

SCOTT EDWARDS ARCHITECTURE, LLP

CITY OF CANBY

Authorized Signature Date

Interim City Administrator Date

Printed Name and Title

EXHIBIT A

SCOPE OF WORK and FEES.

See attached.

Construction-Related Personal Services Agreement

Statutorily Required Public Contracting Provisions - Exhibit B

Consultant shall observe all applicable state and local laws pertaining to public contracts. Pursuant to ORS Chapters 279A, 279B and 279C, which require every public contract to contain certain provisions, and other state law, the following provisions shall be a part of this contract, as applicable. All defined terms in this Attachment shall be interpreted in accordance with Solicitation or Contract Document and the relevant statutory provision. For professional services contracts, Contractor shall be read to mean Consultant, and Subcontractor shall be read to mean subcontractor or subconsultant.

1. ORS 279A.110 (Non-discrimination Certification): Contractor shall certify that Contractor has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a disadvantaged, minority owned, woman owned, veteran owned, or emerging small business enterprise (certified under ORS 200.055.), or a business that is owned or controlled by, or employs a disabled veteran (as defined in ORS 408.225).
2. Pursuant to ORS 279B.220 or 279C.505, as applicable, Contractor shall make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract; shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished, and; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
3. Pursuant to ORS 279B.225, every public contract for lawn and landscape maintenance shall contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.
4. Pursuant to ORS 279B.230(1) or 279C.530(1), as applicable, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
5. Pursuant to ORS 279B.230(2) or 279C.530.(2), as applicable, in every public contract, all subject employers working under the contract are either employers that will comply

Construction-Related Personal Services Agreement

with ORS 656.017 or employers that are exempt under ORS 656.126.

6. Pursuant to ORS 279B.235(1) and 279B.020 and ORS 279C.520 and 279C.540 (Hours of Labor, Holidays, and Overtime): Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, Contractor shall not employ and shall require that its Subcontractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:
 - i. For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
 - ii. For all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
 - iii. For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).
 - iv. The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.
 - v. Contractor shall and shall require its Subcontractors to give notice in writing to their employees who work under this Contract, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
7. Environmental Laws. Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
8. Oregon Tax Law Compliance: Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the date of this Contract, represents and warrants that it has faithfully has complied with, and will continue to comply with during the term of this Contract: (A) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) any tax provisions imposed by a political subdivision of this state that applied to

Construction-Related Personal Services Agreement

Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. Failure to comply with this section is a default for which the City may terminate the Contract and seek damages and other relief available under the terms of the Contract or under applicable law.

9. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the state of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform these services in the state of Oregon prior to entering into this Contract.
10. Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the Contracting Agency's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Contracting Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Contracting Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Contracting Agency otherwise agrees in Writing.



CITY COUNCIL Staff Report

Meeting Date: 9/3/2025

To: The Honorable Mayor Hodson & City Council
Thru: Randy Ealy, Interim City Administrator
From: Emily Guimont, City Attorney
Agenda Item: Consider **Resolution No. 1442**: A Resolution Authorizing the Interim City Administrator to Execute a Memorandum of Agreement with Kahut Companies Holding Incorporated
Goal: N/A
Objective: N/A

Background

Kahut Companies Holdings Incorporated (Kahut) is the City's waste disposal franchisee and holds an exclusive franchise to collect and transport solid waste, recyclable materials, and yard debris from customers within the City. Kahut holds this franchise subject to the terms of a Franchise Agreement. The City executed this Franchise Agreement with Canby Disposal in June of 2010. In September of 2021, the City agreed to assign all rights, duties, and obligations in the Franchise Agreement to Kahut.

The terms of this Franchise Agreement establish, among other things, a franchise fee of 3% imposed against Kahut's "gross revenues" from services it provides under the Franchise Agreement. The Franchise Agreement also sets requirements for the physical characteristics of the receptacles, including container color, that Kahut offers to customers for the collection of solid waste, recyclable materials, and yard debris.

Pink Sistas is a domestic nonprofit corporation registered in Oregon. Pink Sistas' mission is "[t]o inspire women facing breast cancer through relaxing, loving, supportive and fun No-Cost retreats." According to Pink Sistas' website, Pink Sistas is powered entirely by volunteers, has no paid staff, and receives no federal grants or funding. Pink Sistas states that, for those reasons "100% of every generous donation goes directly to supporting women diagnosed with breast cancer—ensuring that every dollar truly makes a difference."

At the June 18, 2025, City Council meeting, Kris Wright, Operations Specialist at Waste Management, and Deb Hart, founder of Pink Sistas, gave public comment to propose a donation program wherein Kahut would offer to Canby customers the option of obtaining a pink recycling container, branded with the Pink Sistas logo, for a donation of \$50.00 to Pink Sistas. Kahut would collect the \$50.00 donation from customers on behalf of Pink Sistas and pass that donation, in whole, on to Pink Sistas. Council's direction to the City Attorney was to review the franchise agreement between the City and Kahut to determine if the terms of the franchise agreement would allow for such a donation program. Particularly, Council sought information regarding whether the Franchise Agreement would permit pink recycling containers and whether the franchise fee established by the Franchise Agreement would apply to the donations collected by Kahut on behalf of Pink Sistas.

Upon review of the Franchise Agreement, it has been determined that:

1. The Franchise Agreement generally requires that solid waste bins be green, recyclable materials carts be gray, and yard debris containers be brown. However, the Franchise Agreement allows Kahut to propose other container colors and gives the City the right to approve other colors at its sole discretion.
2. The franchise fee established by the Franchise Agreement applies to Kahut's "gross revenues." "Gross revenues" is defined as "all revenue or compensation actually remitted by customers to [Kahut]" for services provided under the Agreement.

In accordance with the terms of the Franchise Agreement and with Council's direction, the proposed MOU accomplishes the following:

1. Exercises the City's discretion, granted by the Franchise Agreement, to approve alternative colors to approve Kahut's proposal for pink recyclable containers.
 - a. Kahut has created renderings of the proposed pink recycling containers. These renderings are attached to the proposed MOU as Exhibit B.
2. Interprets the Franchise Agreement's definition of "gross revenues" to not include the donations that Kahut proposes to collect on behalf of and wholly remit to Pink Sistas so that the franchise fee does not apply to that donation.
 - a. The franchise fee continues to apply to all gross revenues, including any portion of any donation that Kahut collects on behalf of Pink Sistas and does not wholly remit to Pink Sistas.
3. Requires Kahut to report to the City, on a quarterly basis, the following information: documentation showing the number and dollar amount of donations collected pursuant to the Donation Program; documentation showing the number and dollar amount of donations remitted to Pink Sistas pursuant to the Donation Program; and documentation showing the number of Pink Containers issued to customers pursuant to the Donation Program.
 - a. This information will allow the City to monitor the donation amounts collected by Kahut and remitted to Pink Sistas.

Attachments

The proposed MOU between the City and Kahut.

Fiscal Impact

None

Options

1. Vote to adopt **Resolution No. 1442**.
2. Vote to not adopt **Resolution No. 1442**.
3. Remand matter to staff for additional information.

Recommendation

Vote to adopt Resolution No. 1422, authorizing the Interim City Administrator to execute a MOU with Kahut.

Proposed Motion

"I move to adopt Resolution No. 1422: A Resolution Authorizing the Interim City Administrator to execute a MOU with Kahut."

RESOLUTION NO. 1442

A RESOLUTION AUTHORIZING THE INTERIM CITY ADMINSTRATOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH KAHUT COMPANIES HOLDINGS INCORPORATED

WHEREAS, the City of Canby (City) and Kahut Companies Holdings Incorporated (Franchisee) are parties to an exclusive franchise agreement (Franchise Agreement) under which Franchisee holds the exclusive franchise, right, and privilege to collect and transport solid waste, recyclable materials, and yard debris from customers with the City of Canby, subject to the terms of the Franchise Agreement;

WHEREAS, Kahut Companies Holdings, LLC, in coordination with Pink Sistas, a domestic nonprofit corporation registered in the State of Oregon, has proposed a donation program wherein Franchisee would offer to qualifying customers a specially issued 95-gallon recycled materials container in the color pink and branded with the Pink Sistas logo in exchange for a fifty dollar (\$50.00) donation that Franchisee would collect from qualifying customers on behalf of Pink Sistas and remit, in whole, to Pink Sistas without any financial consideration or benefit to Franchisee (Donation Program); and

WHEREAS, the City desires to enter into a Memorandum of Understanding (MOU) to establish the terms and conditions under which Franchisee may offer the Donation Program to customers within the City in accordance with the terms and conditions of the Franchise Agreement.

NOW THEREFORE, BE IT RESOLVED by the City of Canby City Council as follows:

1. The City Council authorizes the Interim City Administrator to execute, on behalf of the City, a MOU with Franchisee for the Donation Program in substantially the same form as the MOU attached to this Resolution as Exhibit A.
2. The City Council further authorizes the Interim City Administrator to administratively take all actions necessary to correct any typographical errors, scrivener's errors, or formatting errors in the MOU.
3. This Resolution shall become effective immediately upon adoption.

ADOPTED by the City Council this 3rd day of September, 2025, by the Canby City Council.

Brian Hodson
Mayor

ATTEST:

Maya Benham, CMC
City Recorder

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into by and between the City of Canby (City) and Kahut Companies Holdings Incorporated (Franchisee).

RECITALS

WHEREAS, on June 16, 2010, the City Council of the City of Canby granted to Canby Disposal Company the exclusive franchise, right, and privilege to collect and transport solid waste, recyclable materials, and yard debris from customers within the service area, subject to the terms of the Franchise Agreement (Agreement) and Ordinance 1328; and

WHEREAS, on September 15, 2021, the City Council of the City of Canby adopted Resolution 1358, which assigned all rights, duties, and obligations in the Agreement to Franchisee; and

WHEREAS, Section 5.4.3(F) of the Agreement establishes requirements for the physical characteristic of the receptacles, including containers, used by Franchisee to collect solid waste, recyclable materials, and yard debris; and

WHEREAS, Section 4.1 of the Agreement establishes a franchise fee imposed by the City against Franchisee as a percentage of the gross revenues collected from Franchisee for the services provided under the Agreement; and

WHEREAS, Franchisee, in coordination with Pink Sistas, a domestic nonprofit corporation registered in the State of Oregon, has proposed a donation program wherein Franchisee would offer to qualifying customers a specially issued 95-gallon recycled materials container in the color pink (“Pink Containers”) and branded with the Pink Sistas logo in exchange for a fifty dollar (\$50.00) donation that Franchisee would collect from qualifying customers on behalf of Pink Sistas and remit, in whole, to Pink Sistas (“Donation Program”) without any financial consideration or benefit to Franchisee; and

WHEREAS, Section 5.4.3(F)(b)(4) of the Agreement between the City and Franchisee grants the City discretion to approve recycling container colors other than those expressly permitted by the Agreement; and

WHEREAS, the Agreement imposes a franchise fee against Franchisee’s “gross revenues,” defined as “all revenue or compensation actually remitted by customers to [Franchisee]” for services provided under the Agreement; and

WHEREAS, the parties wish to enter into this MOU to permit Franchisee to offer Pink Containers in accordance with the Donation Program and to clarify the applicability of the Agreement’s Franchise Fee to donations collected by Franchisee and remitted to Pink Sistas pursuant to Donation Program.

NOW, THEREFORE, the parties hereby agree as follows:

1. Recitals.

The Recitals are a material part of this MOU and are incorporated herein.

2. Term.

The term of this MOU shall commence upon execution by both parties and shall continue until terminated by either party.

3. Termination.

Franchisee may terminate this MOU effective upon thirty calendar days' written notice to the City or effective as otherwise mutually agreed upon. Additionally, the City may terminate this this MOU effective immediately upon written notice to Franchisee. Upon termination of this MOU, Franchisee shall immediately comply with any directive from the City to remove the Pink Containers and replace them with containers compliant with the Agreement.

4. Agreement Terms.

Except as may be expressly modified by the terms and conditions of this MOU, the parties ratify and confirm each of the terms and conditions of the Agreement which, the parties acknowledge and agree, remains in full force and effect. In case of conflict between the terms of the Agreement and this MOU, the terms of the Agreement shall apply. The Agreement is attached to this MOU as Exhibit A and incorporated herein by this reference.

5. Containers.

Pursuant to Section 5.4.3(F)(b)(4) of the Agreement, the City approves Franchisee's proposal to offer Pink Containers, in substantially similar form as depicted in the rendering attached to this MOU as Exhibit B and incorporated herein by this reference, to customers for the sole purpose of the Donation Program. All other requirements in Section 5.4.3 of the Agreement shall apply to the Pink Containers.

6. Franchise Fee.

The City and Franchisee agree that donations collected by Franchisee and wholly remitted to Pink Sistas pursuant to the Donation Program are not "revenue or compensation . . . actually remitted by customers" to Franchisee for the services provided under the Agreement. Therefore, the parties agree that the franchise fee established by the Agreement shall not be imposed upon donations that are collected by Franchisee and wholly remitted to Pink Sistas pursuant to the Donation Program. The franchise fee will continue to apply to all "gross revenues," as defined by the Franchise Agreement, which includes any portions of donations that are not wholly remitted from Franchisee to Pink Sistas.

7. Reporting.

Once per quarter, for this duration of this MOU, Franchisee shall provide the following to the City: documentation showing the number and dollar amount of donations collected pursuant to the Donation Program; documentation showing the number and dollar amount of donations remitted to Pink Sistas pursuant to the Donation Program; and documentation showing the number of Pink Containers issued to customers pursuant to the Donation Program.

8. Indemnification.

Both parties mutually agree to indemnify, defend, and hold each other and each other's officers, agents, and employees harmless against any and all claims, demands, damages, liabilities, and costs incurred by the other party, as the result of a third party claim, arising out of, or in connection with, either directly or indirectly, the terms of this MOU.

9. Miscellaneous.

- a. The parties agree that this MOU does not establish any precedent or practice for any future dealings between the parties.
- b. All notices required or permitted under this MOU shall be made in writing and may be given by personal delivery, first class mail, certified mail (return receipt requested), or email (read receipt requested). Mailed notices shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery.
- c. This MOU is governed by the laws of the State of Oregon without reference to its "conflict of laws" provisions that might otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this Agreement shall be brought in the appropriate court of Clackamas County, Oregon.
- d. Neither party shall assign or transfer any interest in or duty under this MOU without the written consent of the other party and no assignment shall be of any force or effect whatsoever unless and until the other party has consented.
- e. In the event any provision or portion of this MOU is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the Parties when they entered into the Agreement.
- f. Franchisee and the City are the only parties to this MOU and are the only parties entitled to enforce its terms. Nothing in this MOUs gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this MOU.
- g. The parties agree not to discriminate on the basis of age, citizenship status, color, familial status, gender identity or expression, marital status, mental disability,

national origin, physical disability, race, religion, religious observance, sex, sexual orientation, and source or level of income in the performance of this MOU.

- h. This MOU and attached Exhibits constitute the entire MOU between the parties. There are no understandings, agreements, or representations, oral or written, not specified in this MOU regarding this MOU.
- i. No waiver, consent, modification, or change of terms of this MOU shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given.
- j. All provisions in this MOU, which by their nature should remain in effect beyond termination or expiration of this MOU, will survive until fulfilled.
- k. This MOU may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute but one and the same MOU.
- l. The parties represent and warrant that they have the right and authority to execute this Agreement. The parties further represent and warrant that the person executing this Agreement is duly authorized to do so.

For the City:

For Franchisee:

Randy Ealy
Interim City Administrator

Date: _____

Date: _____

Franchise Agreement
Between
City of Canby, Oregon
and
Canby Disposal
for
Solid Waste, Recyclable Materials
and Yard Debris Collection Services

TABLE OF CONTENTS

	<u>PAGE</u>
RECITALS	1
ARTICLE 1 DEFINITIONS	3
1.1 Agreement.....	3
1.2 Approved Disposal Site	3
1.3 Approved Recyclable Material Processing Site	3
1.4 Approved Yard Debris Processing Site.....	3
1.5 Approved Transfer Station	4
1.6 Billings	4
1.7 Cart.....	4
1.8 City	4
1.9 Collection	4
1.10 Commencement Date	4
1.11 Commercial Premises	5
1.12 Commingled	5
1.13 Company	5
1.14 Company's Compensation	5
1.15 Container	5
1.16 Curbside	5
1.17 Disposal	5
1.18 Disposal Site.....	6
1.19 Drop Box.....	6
1.20 Effective Date.....	6
1.21 Environmental Laws	6
1.22 Exchange	7
1.23 Facility	7
1.24 Fair Market Value	7
1.25 Fiscal Year	7
1.26 Franchise	7
1.27 Franchise fee	8
1.28 Generator.....	8
1.29 Gross Revenues	8
1.30 Hazardous Substance	8
1.31 Hazardous Waste	9
1.32 Holidays	9
1.33 Household Hazardous Waste	9
1.34 Infectious Waste	9
1.35 Legislation.....	10
1.36 Missed Pick-up	10
1.37 Multi-family dwelling unit.....	10
1.38 Non-Putrescible Solid waste	10
1.39 ORS.....	10
1.40 Owner	11

MEMORANDUM OF UNDERSTANDING
EXHIBIT A

1.41	Party or Parties	11
1.42	Person	11
1.43	Premises.....	11
1.44	Principal Recyclable Materials.....	11
1.45	Processing	11
1.46	Purchase	11
1.47	Processing Site	11
1.48	Putrescible Solid Waste	12
1.49	Rate Period	12
1.50	Rates.....	12
1.51	Receptacles.....	12
1.52	Recycling	12
1.53	Recyclable Material.....	12
1.54	Residential Premises.....	13
1.55	Single-Family Dwelling Unit.....	13
1.55	Solid Waste.....	13
1.57	Source Separated	13
1.58	Subcontractors	14
1.59	Term.....	14
1.60	Transfer Station	14
1.61	Yard debris.....	14
ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF COMPANY.....		15
2.1	Company Status	15
2.2	Company Authorization.....	15
2.3	Agreement Duly Executed.....	15
2.4	No Conflict with Applicable Law or Other Documents	15
2.5	No Litigation.....	16
2.6	No Material Change in Financial Ability	16
2.7	Expertise	16
2.8	Company's Investigation	16
ARTICLE 3 TERM AND SCOPE OF FRANCHISE.....		17
3.1	Term of Agreement.....	17
3.2	Franchise	18
3.3	City's Right to Direct Changes	20
3.4	Ownership of Solid Waste	20
ARTICLE 4 FRANCHISE FEE AND OTHER SURCHARGES		22
4.1	City Franchise Fee.....	22
ARTICLE 5 DIRECT SERVICES.....		24
5.1	Solid Waste Collection	24
5.2	Recyclable Materials Collection.....	26
5.3	Yard Debris Collection	28
5.4	Operations.....	30
5.5	Contingency Plan.....	41
5.6	Recyclable Materials and Yard Debris Processing	42
5.7	Disposal of Solid Waste.....	44
5.8	Service Exceptions; Hazardous Waste Notifications	46
5.9	Collection From City Facilities at No Charge to City	47
5.10	Annual Cleanup Day.....	47

MEMORANDUM OF UNDERSTANDING
EXHIBIT A

5.11	Motor Oil Collection	48
5.12	Infectious Waste Collection	48
ARTICLE 6 OTHER SERVICES		49
6.1	Services and Customer Billing	49
6.2	Customer Service	50
6.3	Public Education	52
6.4	Waste Generation and Characterization Studies.....	53
ARTICLE 7 COMPANY'S COMPENSATION AND RATES		54
7.1	Company's Compensation	54
7.2	Rates.....	54
7.3	Annual Adjustment of Rates	55
7.4	Annual Rate Application Process	57
7.5	Special Rate Review	58
7.6	Rates for Changes in Scope.....	61
7.7	Notice of Rate Adjustments.....	61
7.8	Market Test of Rates	62
ARTICLE 8 REVIEW OF SERVICES AND PERFORMANCE.....		63
8.1	Performance Hearing	63
ARTICLE 9 RECORDS, REPORTS AND INFORMATION REQUIREMENTS.....		65
9.1	General.....	65
9.2	Records	65
9.3	Reports.....	67
9.4	Adverse Information	70
ARTICLE 10 INDEMNIFICATION, INSURANCE AND BOND.....		71
10.1	Indemnification	71
10.2	Hazardous Substances Indemnification	72
10.3	Insurance	73
ARTICLE 11 CITY'S RIGHT TO PERFORM SERVICE.....		78
11.1	General.....	78
11.2	Temporary Possession of Company's Property.....	80
11.3	Billing and Compensation to City during City's Possession.....	80
11.4	City's Right to Relinquish Possession	80
11.5	Duration of City's Possession.....	80
ARTICLE 12 DEFAULT, REMEDIES AND LIQUIDATED DAMAGES		82
12.1	Events of Default.....	82
12.2	Right to Terminate Upon Default.....	83
12.3	Liquidated Damages.....	84
12.4	Excuse from Performance	88
12.5	Notice, Hearing and Appeal of City Breach	89
ARTICLE 13 OTHER AGREEMENTS OF THE PARTIES		90
13.1	Relationship of Parties.....	90
13.2	Compliance with Law	90
13.3	Governing Law	90
13.4	Jurisdiction.....	91
13.5	Assignment	91
13.6	Contracting or Subcontracting	93
13.7	Binding on Assigns.....	93
13.8	Transition to Next Company.....	93

MEMORANDUM OF UNDERSTANDING
EXHIBIT A

13.9	Parties in Interest	93
13.10	Condemnation.....	94
13.11	Notice.....	94
13.12	Representatives of the Parties	94
13.13	City Free to Negotiate with Third Parties	95
13.14	Compliance with Municipal Code	95
13.15	Privacy	95
13.16	Attorney Fees and Cost Recovery.....	96
ARTICLE 14 MISCELLANEOUS AGREEMENTS.....		97
14.1	Entire Agreement.....	97
14.2	Article and Section Headings.....	97
14.3	References to Laws and Other Agreements	97
14.4	Interpretation.....	97
14.5	Agreement.....	97
14.6	Severability	97
14.7	Exhibits	98
14.8	Waiver.....	98

Exhibits

- 1 CITY FACILITIES
- 2 RATES FOR RATE PERIOD JULY 1, 2010 THROUGH JUNE 30, 2011
- 3 NOTARY CERTIFICATION

1 **FRANCHISE AGREEMENT BETWEEN**

2 **THE CITY OF CANBY, OREGON**

3 **AND**

4 **CANBY DISPOSAL FOR SOLID WASTE, RECYCLABLE MATERIALS,**

5 **AND YARD DEBRIS COLLECTION SERVICES**

6 This Franchise Agreement (Agreement) is entered into this ____ day of
7 _____, 2010, by and between the City of Canby, Oregon (City) and Canby
8 Disposal (Company) for the collection, transportation, and disposal of solid waste and
9 the collection, transportation, and processing of recyclable materials and yard debris.

10 **RECITALS**

11 This Agreement is entered into with reference to the following facts and circumstances:

12 WHEREAS, the Legislative Assembly of the State of Oregon, by enactment of the 1993
13 Oregon Revised Statutes (ORS), has declared that it is a matter of statewide concern for
14 local agencies to make adequate provisions for solid waste handling and the
15 opportunity to recycle within their jurisdictions; and,

16 WHEREAS, the City Council of City has determined that the public health, safety, and
17 well-being require that an exclusive franchise be awarded to a qualified company for
18 the collection, transportation, and disposal of solid waste and the collection,
19 transportation, and processing of recyclable materials, and yard debris; and,

20 WHEREAS, City and Company are mindful of the provisions of the laws governing the
21 safe collection, transfer, and disposal of solid waste, ORS 459 and ORS 459A, the
22 Resource Conservation and Recovery Act (RCRA), and the Comprehensive
23 Environmental Response, Compensation and Liability Act ("CERCLA"); and,

24 WHEREAS, City and Company desire to leave no doubts as to their respective roles,
25 and by entering into this Agreement, City is not thereby becoming a "generator" or an
26 "arranger" as those terms are used in CERCLA § 107(a)(3), and it is Company, not City,
27 which is "arranging for" the collection, removal, transportation, and disposal of solid
28 waste which may contain hazardous substances; and,

MEMORANDUM OF UNDERSTANDING
EXHIBIT A

1 WHEREAS, the City Council of City declares its intention of maintaining reasonable
2 rates and quality service related to the collection, transportation, and disposal of solid
3 waste, the collection, transportation, and processing of recyclable materials and yard
4 debris, and other services; and,

5 WHEREAS, City and Company (Parties) hereto desire to enter said Agreement.

6 NOW, THEREFORE, in consideration of the premises above stated and the terms,
7 conditions, covenants and agreements contained herein, the Parties do hereby agree as
8 follows:

ARTICLE 1
DEFINITIONS

1.1 Agreement

"Agreement" means this franchise agreement between City and Company for collection, transportation, and disposal of solid waste and the collection, transportation, and processing of recyclable materials and yard debris, including all exhibits and attachments, and any amendments thereto.

1.2 Approved Disposal Site

"Approved Disposal Site" means the Columbia Ridge Landfill and the Riverbend Landfill, both of which are owned and operated by Waste Management Incorporated, a subcontractor to the Company, and Coffin Butte in Benton County unless the City designates a different disposal site in accordance with Section 3.3 or accepts the Company's proposal for an alternative disposal site in accordance with Section 5.8.4.

1.3 Approved Recyclable Material Processing Site

"Approved Recyclable Material Processing Site" means the K.B. Recycling, Inc. which is owned and operated by Fred Kahut and located in Clackamas, Oregon, and which was selected by Company and approved by the City, unless the City designates a different disposal site in accordance with Section 3.3, or accepts the Company's proposal for an alternative recyclable material processing site in accordance with Section 5.8.4..

1.4 Approved Yard Debris Processing Site

"Approved Yard Debris Processing Site" means Recology, Inc., located in West Linn, Oregon and which was selected by Company and approved by the City, unless the City designates a different processing site in accordance with Section 3.3, or accepts the Company's proposal for an alternative yard debris processing site in accordance with Section 5.8.4.

1.5 Approved Transfer Station

"Approved Transfer Station" means the Canby Transfer and Recycling, Inc., and is located in Canby, Oregon and which was selected by Company and approved by the City, unless the City designates a different transfer station in accordance with Section 3.3 or accepts the Company's proposal for an alternative transfer station in accordance with Section 5.8.4.

1.6 Billings

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by City or Company, or made by others for City or Company, to owners or occupants of property, including residential premises and commercial premises, served by Company for the collection of solid waste, recyclable materials, or yard debris.

1.7 Cart

"Cart" means a plastic receptacle, that has a capacity ranging from 20- to 96-gallons, hinged lid, and wheels and that is lifted and emptied by an automated or semi-automated collection vehicle.

1.8 City

"City" means City of Canby, Oregon, a municipal corporation, and all the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the term of this agreement, and is hereby designated as an allocated service area pursuant to ORS 459A.085(3).

1.9 Collection

"Collection" (or variations thereof) means a service providing for collection of solid waste, recyclable materials, and/or yard debris.

1.10 Commencement Date

"Commencement Date" means the date specified in Section 3.1.1 when collection, transportation, processing, and disposal services required by this Agreement shall be provided by Company.

1 **1.11 Commercial Premises**

2 "Commercial Premises" means commercial and industrial property upon which
3 business activity is conducted, including, but not limited to, retail sales, services,
4 wholesale operations, manufacturing and industrial operations, but excluding
5 businesses conducted upon residential premises which are permitted under
6 applicable zoning regulations and are not the primary use of the property.

7 **1.12 Commingled**

8 "Commingled" means a mix of recyclable materials.

9 **1.13 Company**

10 "Company" means Canby Disposal Company, a corporation organized and
11 operating under the laws of the State of Oregon and its officers, directors,
12 employees, agents, and subcontractors.

13 **1.14 Company's Compensation**

14 "Company's Compensation" means the revenue received by the Company in
15 return for providing services in accordance with this Agreement as described in
16 Article 7.

17 **1.15 Container**

18 "Container" means a receptacle with capacity of approximately one to eight
19 cubic yards, with a hinged lid, and with wheels.

20 **1.16 Curbside**

21 "Curbside" means the placement of receptacle(s) for pickup no more than three
22 feet from any traveled street or alleyway, or as designated by City, provided that
23 the Company can safely and feasibly provide service to such location.

24 **1.17 Disposal**

25 "Disposal" (or variations thereof) means the ultimate disposition of solid waste
26 collected by Company at the approved disposal site in full regulatory
27 compliance.

1.18 Disposal Site

"Disposal Site" means land and facilities used for the disposal, handling or transfer of, or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, Transfer Stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050 or 468B.053; a site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

1.19 Drop Box

"Drop Box" means any storage receptacle ranging from 10 to 40 cubic yards which is designed for storage and collection of solid waste, recyclable materials, or yard debris. A drop box may be an open-top container or an enclosed container with a compaction unit.

1.20 Effective Date

"Effective Date" means the date on which the latter of the two parties signs the Agreement and the date on which Company may begin to take actions and incur costs in preparation to provide collection, transportation, processing, and disposal services required by this Agreement.

1.21 Environmental Laws

"Environmental Laws" means all federal and state statutes and regulations, and county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic

Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the Oregon Solid waste Management Act, ORS Chapter 459; the Oregon Reuse and Recycling Act, ORS 459A; the Oregon Employment Safety and Health Act, ORS Chapter 654; and the Oregon Workers' Compensation Act, ORS 656, as currently in force or as hereafter amended, and all rules and regulations promulgated there under.

1.22 Exchange

"Exchange" means a mutual act of giving or taking of one item or service for another. This includes any transaction into which money enters either as the consideration or as the basis of measure.

1.23 Facility

"Facility" means any plant or site, owned or leased and maintained, operated or used by Company for purposes of performing under this Agreement.

1.24 Fair Market Value

"Fair Market Value" means the cash price (or its equivalent in terms of savings on collection and disposal fees) that is at least equal to the cost of collection and disposal of a recyclable materials or group of recyclable materials, that would be purchased or exchanged between the collector of said recyclable material or group of recyclable materials and the generator of said recyclable material or group of recyclable materials.

1.25 Fiscal Year

"Fiscal Year" means a 12-month period commencing July 1 and concluding June 31 of the subsequent year.

1.26 Franchise

"Franchise" includes a franchise, certificate, contract or license issued by a local government unit authorizing a person to provide solid waste, recyclable materials, and yard debris collection and management services.

1.27 Franchise fee

"Franchise fee" means the fee paid by Company to City for the right to hold the franchise for solid waste, recyclable materials, and yard debris collection services that are granted by this Agreement.

1.28 Generator

"Generator" means any person whose act or process produces solid waste, recyclable materials, or yard debris or whose act first causes solid waste, recyclable materials, or yard debris to become subject to regulation.

1.29 Gross revenues

"Gross revenues" means any and all revenue or compensation in any form actually remitted by customers to the Company for the collection and transportation of solid waste, recyclable materials, and yard debris pursuant to this Agreement excepting, however, disposal fees for drop box services. Gross revenues shall be determined in accordance with generally accepted accounting principles and shall include actual monthly customer fees received for collection of solid waste, recyclable materials, and yard debris, without deductions for franchise fees.

1.30 Hazardous Substance

"Hazardous Substance" shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "hazardous substances", "hazardous materials", "hazardous wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) the Oregon Hazardous Waste and Hazardous Materials II Act, ORS 466.005; and (vi) the Clean Air Act, 42 USC §7901 et seq.; (b) any amendments, rules or regulations promulgated there under to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local

environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyls ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

1.31 Hazardous Waste

"Hazardous Waste" has the meaning given that term in ORS 466.005.

1.32 Holidays

"Holidays" are defined as New Year's Day, Independence Day, Thanksgiving Day, and Christmas Day.

1.33 Household Hazardous Waste

"Household Hazardous Waste" means any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households and is generated by the household. "Household Hazardous Waste" may include, but is not limited to, some cleaners, solvents, pesticides, and automotive and paint products.

1.34 Infectious Waste

"Infectious Waste" means biological waste including medical waste described as:

(a) Blood and blood products, excretions, exudates, secretions, suctioning and other body fluids that cannot be directly discarded into a municipal sewer system, including solid or liquid wastes from renal dialysis and waste materials reasonably contaminated with blood or bloody fluids.

(b) Cultures and stocks of etiologic agent and associated biologicals, including specimen cultures and disks and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals and serums and discarded live and attenuated vaccines; but does not include throat or urine cultures.

(c) Sharps that have been removed from their original sterile containers, including needles, I.V. tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling, and syringes.

(d) Pathological waste, including biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research, the bedding of the animals and other waste from such animals. Pathological waste does not include formaldehyde or other preservative agents.

1.35 Legislation

"Legislation" means any code, ordinance, resolution or any other forms/enactment of the governing body of City, currently existing or may hereafter be adopted, constituting law or regulation governing the operation of Company.

1.36 Missed Pick-up

"Missed Pick-Up" means failure of Company to pick up solid waste, recyclable materials, or yard debris that has been set out by the customer in accordance with this Agreement, and at the prescribed level of service, as mutually agreed upon by the customer and Company.

1.37 Multi-Family Dwelling Unit

"Multi-family Dwelling Unit" means any Premises with five dwelling units or more used for residential purposes (not including hotels or motels), irrespective of whether residence therein is transient or permanent.

1.38 Non-Putrescible Solid Waste

"Non-Putrescible Solid Waste" means inoperable vehicles; vehicle parts; tires; residential, commercial, and industrial construction and demolition debris; plastic; glass; cardboard; and wastepaper.

1.39 ORS

"ORS" means the 2009 Oregon Revised Statutes.

1 **1.40 Owner**

2 "Owner" means the Person holding the legal title to the real property constituting
3 the premises to which solid waste, recyclable materials, or yard debris collection
4 service is to be provided under this Agreement.

5 **1.41 Party or Parties**

6 "Party" or "Parties" refers to the City and Company, individually or together.

7 **1.42 Person**

8 "Person" means the United States, the state or a public or private corporation,
9 local government unit, public agency, individual, partnership, association, firm,
10 trust, estate or any other legal entity.

11 **1.43 Premises**

12 "Premises" means any land, or building, in the City where solid waste, recyclable
13 materials, or yard debris is generated or accumulated.

14 **1.44 Principal Recyclable Materials**

15 "Principal Recyclable Materials" means those recyclable materials designated
16 from time to time by the State of Oregon Department of Environmental Quality.

17 **1.45 Processing**

18 "Processing" (or variations thereof) means to prepare, treat, or convert through
19 some special method.

20 **1.46 Purchase**

21 "Purchase" means the legal transmission of legal title to property from one
22 person to another through a voluntary act or agreement, with compensation in
23 the form of money or other consideration, by a buyer to a seller of the property.

24 **1.47 Processing Site**

25 "Processing Site" means any plant or site used for the purpose of sorting,
26 cleansing, treating or reconstituting recyclable materials or yard debris for the
27 purpose of making such material available to end-use markets or for reuse.

1.48 Putrescible Solid Waste

"Putrescible Solid Waste" means solid waste or waste material, including bones; meat and meat scraps; fat; grease; fish and fish scraps; food containers contaminated with food wastes; particles or residues; vegetable and fruit food wastes; manure; dead fowl; dead animals or similar organic wastes, that are capable of causing offensive odors, creating a health hazard, or attracting or providing food for vectors.

1.49 Rate Period

"Rate Period" means the 12-month period commencing July 1 and concluding June 30 of the next year with the exception that the first rate period will be a 12-month period commencing July 1, 2010 and concluding on June 30, 2011.

1.50 Rates

"Rates" means the unit to be charged customers by Company for providing solid waste collection and disposal, recyclable materials collection and processing services, and yard debris collection and processing services. Rates may be adjusted from time to time in accordance with this Agreement.

1.51 Receptacles

"Receptacles" means any and all types of solid waste, recyclable materials, and yard debris receptacles including cans, bags, bins, carts, containers, drop boxes, and compactors or any other means of containment of solid waste, recyclable materials, or yard debris.

1.52 Recycling

"Recycling" means any process by which solid waste materials are transformed into new products where the solid waste materials may lose their identity.

1.53 Recyclable Material

"Recyclable Material" means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material. Recyclable materials are a subset of solid waste.

1 **1.54 Residential Premises**

2 "Residential Premises" means property used for residential purposes, irrespective
3 of whether such dwelling units are rental units or are owner occupied.

4 **1.55 Single-Family Dwelling Unit**

5 "Single-Family Dwelling Unit" means each residential premises used for or
6 designated as a single-family residential dwelling, including each unit of a
7 duplex, triplex, fourplex, or town house in all cases in which there is separate or
8 individual solid waste and recyclable materials collection service using cans or
9 carts.

10 **1.56 Solid waste**

11 "Solid waste" means all useless, unwanted, or discarded putrescible solid waste
12 and non-putrescible solid waste, including, but not limited to, garbage, rubbish,
13 refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool
14 pumpings or other sludge, useless or discarded commercial and industrial,
15 demolition and construction materials, discarded or abandoned vehicles or parts
16 thereof, discarded home and industrial appliances, manure, vegetable or animal
17 solid and semisolid materials, dead animals and infectious waste as defined in
18 ORS 459.386. "Solid waste" does not include:

19 (a) Hazardous waste as defined in ORS 466.005.

20 (b) Materials used for fertilizer or for other productive purposes or which are
21 salvageable as such materials on land in agricultural operations in the
22 growing or harvesting of crops and the raising of fowl or animals. This
23 exception does not apply to the keeping of animals on land which has been
24 zoned for residential non-agricultural purposes.

25 (c) Septic tank and cesspool pumping or chemical toilet waste.

26 **1.57 Source Separated**

27 "Source Separated" means the segregation, by the generator, of materials
28 designated for separate collection for some form of recycling, composting,
29 recovery, or reuse.

1.58 Subcontractors

"Subcontractor" means a party who has entered into a contract, express or implied, with the Company for the performance of an act that is necessary for the Company's fulfillment of its obligations under this Agreement.

1.59 Term

"Term" means the Term of this Agreement, including extension periods if granted, as provided for in Article 3.

1.60 Transfer Station

"Transfer Station" means a fixed or mobile facility other than a collection vehicle where solid waste, recyclable materials, and/or yard debris is deposited temporarily after being removed from the site of generation but before being transported to a final disposal or processing location.

1.61 Yard debris

"Yard debris" includes grass clippings, leaves, hedge trimmings and similar vegetative waste generated from residential premises or landscaping activities, but does not include stumps or similar bulky wood materials. Yard debris is a subset of solid waste.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF COMPANY

2.1 Company Status

Company is a duly organized, validly existing company in good standing under the laws of the State of Oregon. It is qualified to transact business in the State of Oregon and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

2.2 Company Authorization

Company has the authority to enter into and perform its obligations under this Agreement. If appropriate or necessary, the Board of Directors of Company has taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement.

2.3 Agreement Duly Executed

The persons signing this Agreement on behalf of Company have been duly authorized by Company to do so, and this Agreement has been duly executed and delivered by Company in accordance with the authorization of its Board of Directors or shareholders, if necessary, and is enforceable against Company in accordance with its terms.

2.4 No Conflict with Applicable Law or Other Documents

Neither the execution nor delivery by Company of this Agreement nor the performance by Company of its obligations hereunder:

- a) Conflicts with, violates, or will result in a violation of any existing applicable law; or
- b) Conflicts with, violates, or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing agreement or instrument to which Company is a party, or by which Company or any of Company's properties or assets is bound; or

c) Will result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the properties or assets of Company that will interfere materially with Company's performance hereunder.

2.5 No Litigation

There is no action, suit, proceeding or action at law or equity, or to the best of Company's knowledge, any investigation before or by any court or governmental entity, pending or threatened against Company or otherwise affecting Company, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect Company's performance hereunder, or which in any way, would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Company.

2.6 No Material Change in Financial Ability

Company has sufficient financial resources to perform all aspects of its obligations hereunder. There has been no material adverse change in Company's financial circumstances since the date of the most recent financial statements.

2.7 Expertise

Company has the expert, professional, and technical capability to perform all of its obligations under this Agreement.

2.8 Company's Investigation

Company has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by Company under the Agreement, and enters into this Agreement on the basis of that independent investigation.

ARTICLE 3
TERM AND SCOPE OF FRANCHISE

3.1 Term of Agreement

3.1.1 Effective Date and Commencement Date

The Effective Date of this Agreement shall be the date the later of the parties executes Agreement.

3.1.2 Term of Agreement

The term of this Agreement shall be considered as a continuing or rolling ten (10) year franchise, commencing at 12:01 a.m. July 1, 2010 subject to termination as follows:

Unless grounds exist for termination of the franchise under Article 12, this franchise shall be considered as a continuing or rolling ten (10) year term. That is, beginning on July 1 of each year, the franchise will be consider renewed for an additional ten (10) year term, unless at least thirty (30) days prior to July 1 of any year the City notifies the Company of its intent to terminate the franchise. Upon giving such notice of termination, the Company shall have a franchise which will terminate ten (10) years from the date of the City's notification.

In the event the Company desires to terminate service given under the terms of this franchise, then it shall give not less than two (2) years notice of its intent to terminate service and obligations under the franchise.

3.1.3 Conditions to Effectiveness of Agreement

The obligation of City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by City, upon City's expressed written consent. Waivers are limited to those expressed in writing, and are in the sole and exclusive discretion of City.

- a) Accuracy of Representations. Representations and warranties made by Company throughout this Agreement are accurate, true, and correct on and as of the effective date of this Agreement.
- b) Absence of Litigation. There is no litigation pending or threatened in any court challenging the award of this franchise to Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance. Company has furnished evidence of the insurance required by Article 10.
- d) Effectiveness of City Council Action. City Ordinance No. 1328 which approves this Agreement shall have become effective pursuant to the State of Oregon law prior to the effective date.

3.2 Franchise

3.2.1 Grant and Acceptance of Franchise

Subject to Section 3.2.2, the City hereby grants to Company the exclusive franchise, right and privilege to collect and transport solid waste, recyclable materials, and yard debris accumulating in the City "allocated service area", as defined in Section 1.8 above, that is required to be accumulated and offered for collection to Company in accordance with this Agreement and such rules and regulations set forth by ordinances of City that are not inconsistent with this Agreement.

3.2.2 Scope of Franchise

The Franchise for the collection and transportation of solid waste, recyclable materials, and yard debris granted to Company shall be exclusive except as to the categories of solid waste, recyclable materials, and yard debris listed in this Section.

- a) Solid waste, recyclable materials, or yard debris removed from any premises by the generator, and transported personally by the owner or occupant of such premises (or by his or her full-time employees) to any processing facility or disposal site with the exception that the owner of an apartment may not remove and transport materials generated by a tenant;

- 1 b) Solid waste, recyclable materials, or yard debris that is hauled by a
2 contractor or City as an incidental activity associated with work
3 performed by the company for a resident or business or work performed
4 by City such as, but limited to, a construction and demolition debris
5 hauled by a company that is hired to remodel a home, or yard debris
6 hauled by a landscaper that services a commercial business.
- 7 c) Recyclable materials and yard debris generated by commercial premises,
8 including City facilities, which are collected by a person (or company)
9 through a private arrangement with the generator and the generator is
10 compensated for the materials collected;
- 11 d) Source separated, principal recyclable materials as defined in ORS 459A
12 and the rules promulgated there under, which have been purchased or
13 exchanged for fair market value, unless said principal recyclable materials
14 create a public nuisance;
- 15 e) Reusable beverage containers as defined in ORS 459A unless mixed with
16 solid waste;
- 17 f) By-products of sewage treatment, including sludge, sludge ash, grit and
18 screenings;
- 19 g) Recyclable materials removed from any premises with permission from
20 generator by charitable or non-profit organizations; and,
- 21 h) Abandoned cars removed from any premises by a licensed towing
22 company authorized to do so by City.

23 **3.2.3 Limitations**

24 This grant to Company of an exclusive franchise, right and privilege to collect,
25 transport, and dispose of solid waste, and collect, transport, and process
26 recyclable materials and yard debris shall be interpreted to be consistent with
27 state and federal laws, now in effect and adopted during the term of the
28 Agreement; and the scope of this exclusive Franchise shall be limited by current
29 and developing state and federal laws with regard to solid waste, recyclable
30 materials, and yard debris handling, exclusive Franchise, solid waste flow
31 control, and related doctrines. In the event that future interpretations of current

law, enactment or developing legal trends limit the ability of City to lawfully provide for the scope of franchise services as specifically set forth herein, Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that City shall not be responsible for any lost profits claimed by Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Company to minimize the financial impact to other services being provided as much as possible.

3.2.4 Acceptance of Franchise

Company hereby accepts the franchise on the terms and conditions set forth in this Agreement, and all such ordinances adopted by City that are not inconsistent with this Agreement.

3.3 City's Right to Direct Changes

City may direct Company to modify the manner in which it performs existing services. Pilot programs and innovative services that may entail new collection methods, different kinds of services and/or new requirements for generators are included among the kinds of changes that City may direct. Company may seek an adjustment in its Company's compensation in accordance with Section 7.5 and 7.6 for providing such additional or modified services.

3.4 Ownership of Solid waste

Once solid waste, recyclable materials or yard debris is placed in receptacles and properly placed at the designated collection location, ownership and the right to possession of such material shall transfer directly from the generator to Company by operation of this Agreement. Subject to the provisions of this Agreement, Company shall have the right to retain any benefit resulting from its right to retain, recycle, process, dispose of, or reuse the solid waste, recyclable materials, and yard debris which it collects. Solid waste, recyclable materials, yard debris, or any part thereof, which is disposed of at a disposal site or facility (whether landfill, transformation facility, transfer station, processing facility or material recovery facility) shall become the property of the owner or operator of the disposal site(s) or facility once deposited there by Company. City may obtain ownership or possession of solid waste, recyclable materials, or yard debris

MEMORANDUM OF UNDERSTANDING
EXHIBIT A

1 placed for collection upon written notice of its intent to do so, however, nothing
2 in this Agreement shall be construed as giving rise to any inference that City has
3 such ownership or possession unless such written notice has been given to
4 Company. If the City exercises its right to own or possess some or all of
5 materials placed for Collection, the City's right to materials shall be handled as a
6 City-directed change in accordance with Section 3.3, and the Company's
7 compensation shall be adjusted to reflect changes in costs incurred by the
8 Company.

ARTICLE 4
FRANCHISE FEE AND OTHER SURCHARGES

4.1 City Franchise Fee

4.1.1 Franchise Fee Amount

In consideration of the exclusive Franchise provided in Section 3.2 of this Agreement, Company shall pay to City **three (3) percent** (or another amount as provided in Section 4.1.3) of the gross revenues collected by Company from services provided in City for the period of the first year beginning July 1, 2010 through June 30, 2011.

Beginning on July 1, 2011, company shall pay to City **five (5) percent** (or another amount as provided in Section 4.1.3) of the gross revenues collected by Company from services provided in City.

4.1.2 Time and Method of Payment

On or before the last day of the month following the end of each calendar quarter, Company shall calculate and pay the franchise fee due to City for revenues received during the preceding calendar quarter and provide written statement of the gross revenues received for each month during the quarter and the Company's calculation of the franchise fee payment. The City shall review the Company's franchise fee statement and may request, and Company shall provide, supporting documents related to the statement provided. If the City identifies adjustments to the statement or calculations, the City shall notify Company no later than 30 calendar days after receipt of franchise fee payment and shall seek an explanation for any apparent differences. If the franchise fee is not paid on or before the last day of the month following the end of each calendar quarter, Company shall pay to City a late payment fee in an amount equal to 2% of the amount owing for that month; plus an additional 2% owing on any unpaid balance for each additional 30-calendar-day period the fee remains unpaid. In the event of a dispute between the City and Company, the Company shall pay all fees due in accordance with Article 4 accompanied by a statement indicating such payment is made under protest and identifying the date the related claim was filed. If the Company prevails in the dispute settlement, the City shall pay Company any fees paid under protest plus interest, where the

1 annual interest rate shall be calculated using the most-recently published average
2 daily interest rate for the Oregon Local Government Investment Pool (LGIP)
3 published by the Oregon State Treasurer's office. If the Company does not
4 prevail in the dispute settlement, the City shall retain the fees paid under protest.

5 **4.1.3 Adjustment to Franchise fee**

6 City may adjust the amount of the franchise fee annually. Such adjustment shall
7 be reflected in the rates that Company is allowed to charge and collect from
8 customers in accordance with Article 7 any such adjustment shall occur on the
9 first day of any rate period affected by the change in the fees.

ARTICLE 5
DIRECT SERVICES

5.1 Solid Waste Collection

5.1.1 General

The work to be performed by Company pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Company of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not.

The work to be performed by Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within City are provided reliable, courteous, and high-quality solid waste, recyclable materials, and yard debris collection services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Company of the duty of accomplishing all other aspects in the manner provided in this section, whether such other aspects are enumerated elsewhere in the Agreement or not.

Company agrees to actively identify receptacles collected from commercial properties containing significant quantities of recyclable materials or yard debris and offer the generator commercial recyclable materials or yard debris collection service.

5.1.2 Single-Family Dwelling Unit

Company shall collect solid waste (at the service level subscribed to and paid for by its customers) from the receptacles that have been delivered for collection to the curbside by the generator. The Company shall offer residential customers the choice of the following service levels:

- Weekly 20-, 35-, 65-, or 95-gallon (or similar sizes) cart collection service

- Monthly 35-gallon (or similar size) cart collection service
- On-call, 35-gallon cart collection service for customers that do not subscribe to weekly or monthly solid waste collection service.
- Extra 35-gallon can or bag collection service (on the day of regularly scheduled solid waste collection) from customers that subscribe to regular service

The Company shall provide receptacles to all customers that subscribe to weekly cart service. The Company shall use semi-automated or automated collection vehicles to perform the collection services, unless another method is approved by City. City approval will not be unreasonably withheld. Notwithstanding the foregoing, Company shall collect solid waste from the side or back yard of those single-family dwelling units that qualify as handicapped as defined by City or that pay the approved rate for backyard service, provided that such customers place the solid waste cart in a location that is visible from the street.

5.1.3 Commercial and Multi-Family Dwelling Units

Company shall collect solid waste from all commercial premises and multi-family dwelling unit premises as frequently as scheduled by the customer, but not less than once per week. Company shall collect solid waste from receptacles at a location selected by the customer and approved by the Company and City, provided that in the case of a dispute, the City shall designate the collection location. Company shall allow each commercial and multi-family customer to select a collection service methodology that best suits the needs of its premises. Specifically, the Company shall offer the following collection service methodologies to commercial properties and multi-family dwelling unit premises:

A. Cart or Container Service

Company shall allow each commercial premises or multi-family dwelling unit premises to use carts or containers for solid waste collection. Company shall provide each customer with a choice of one or more carts with capacities ranging from 35 to 95 gallons (or similar sizes) or containers with capacity ranging from 1 to 8 cubic yards (or similar sizes).

B. Drop Box and Compactor Service

Company shall allow a customer to use a drop box or compactor for solid waste collection to meet the customer's disposal needs. In such case, Company shall provide customer with a choice of receptacle capacities ranging from 10 to 40 cubic yards. Company shall offer customers the option to purchase or lease compactors through either the Company or an outside vendor. Company shall collect solid waste at the subscribed service level from Company-provided solid waste receptacles in compliance with any and all local ordinances in existence as of the effective date of this Agreement.

Special consideration shall be given when determining the pick up area for commercial, and/or multi-family dwelling unit accounts to ensure that the flow of traffic is not impeded by collection operations and that it does not result in aesthetic degradation of an area. Additionally, if in City's opinion the location of an existing pickup area is inappropriate, City may require the customer to relocate the pickup area.

5.1.4 City Facilities

Company shall collect solid waste from City facilities as described in Section 5.9 and shall provide all receptacles necessary for such collection.

5.2 Recyclable Materials Collection

5.2.1 General

Company shall offer all customers source separated recyclable materials collection services. For purposes of this section, recyclable materials shall include, at a minimum, newspapers and magazines, scrap paper (cereal & cracker boxes, labels from steel cans, milk cartons and drink boxes, office paper, opened mail, paper bags, paper egg cartons, shoe boxes, shredded paper, soft drink boxes, wrapping paper), phone books, cardboard, plastic bottles with neck or screw top (detergent bottles, lotion bottles, milk jugs, shampoo bottles, water & juice bottles), metals (aerosol cans, metal cans, lids, metal coat hangers, metal pie plates, trays, other metal products as long as they fit inside cart, otherwise call for other arrangements), glass bottles and jars (clean, labels are ok), and motor oil (in an unbreakable container with a screw top lid such as a milk or water jug).

5.2.2 Single-Family Dwelling Unit

Company shall collect source separated recyclable materials weekly from customers that have subscribed to solid waste collection service, as well as monthly and on-call customers, and such service shall include collection of commingled recyclable materials except glass which shall be separately collected. Company shall provide such customers 95-gallon carts (or similar size) for commingled recyclable materials and a 14-gallon (or similar size) bin for glass collection. Company shall collect recyclable materials placed curbside by the customer for collection in Company-provided receptacles in accordance with instructions provided by the Company. Recyclable materials collection shall be on the same day of the week as solid waste collection service. Notwithstanding the foregoing, Company shall collect recyclable materials from the side or back yard of those single-family dwelling units that qualify as handicapped as defined by City, provided that such customers place the recyclable materials cart in a location that is visible from the street.

5.2.3 Commercial and Multi-Family Dwelling Unit

Company shall collect recyclable materials at the subscribed service level from Company-provided receptacles.

Company shall collect recyclable materials from commercial premises and multi-family dwelling unit premises as frequently as scheduled by customer, but not less than once per week. Company shall allow commercial customers to select a collection service method that best suits the needs of its premises. Specifically, the Company shall offer the following choices to commercial customers:

A. Cart or Container Service

Company shall allow commercial and multi-family dwelling unit customers to use cart(s) or container(s) for source separated recyclable materials collection, and Company shall collect commingled recyclable materials with the exception of glass that shall be separately collected. Company shall provide each customer with a choice of one or more carts with capacities of 35 or 95 gallons (or similar sizes), or containers with capacity of four cubic yards (or similar sizes).

B. Drop Box and Compactor Service

Company shall allow commercial and multi-family dwelling unit customers to use a drop Box or compactor for source separated recyclable materials collection to meet customer's permanent needs, and Company shall collect commingled recyclable materials with the exception of glass that shall be separately collected. In such case, Company shall provide customers with a choice of receptacle capacities ranging from 10 to 40 cubic yards. Company shall offer customers the option to purchase or lease compactors through Company or an outside vendor.

5.2.4 City Facilities

Company shall collect all source separated recyclable materials from City facilities as described in Section 5.9, and shall provide all receptacles necessary for such collection. Company shall collect commingled recyclable materials with the exception of glass that shall be separately collected

5.3 Yard Debris Collection

5.3.1 General

Company shall offer all customers yard debris collection services.

5.3.2 Single-Family Dwelling Unit

Company shall collect source separated yard debris from single-family dwelling units weekly throughout the year round if the customer subscribes to and pays for such service. Company shall provide each customer with a 65-gallon (or similar size) cart. Company shall provide weekly curbside collection of green waste on the same day as solid waste collection from the service area's single-family dwelling units. Company shall use semi-automated or automated collection vehicles, unless another method is approved by City. City approval will not be unreasonably withheld. Notwithstanding the foregoing, Company shall collect yard debris from the side or back yard of those single-family dwelling units that qualify as handicapped as defined by City, provided that such customers place the yard debris cart in a location that is visible from the street.

Company shall collect source separated yard debris from customers that do not subscribe to weekly yard debris collection services on an on-call basis as

requested by the customer. In such cases, customers shall place source separated yard debris curbside in 65-gallon carts for collection and Company shall collect the yard debris and bill the customer for the service.

Company shall collect source separated yard debris, from customers that subscribe to regular yard debris collection service, in excess of that placed in the customer's 65-gallon cart. In such cases, the customers shall place the extra yard debris curbside in a 35-gallon can or compostable paper bag for collection on the day of regularly scheduled yard debris collection, and Company shall collect the yard debris and bill the customer for the extra service.

5.3.3 Commercial and Multi-family Dwelling Unit

Company shall collect source separated yard debris from commercial properties and multi-family dwelling units if the customer subscribes to and pays for such service. Collection shall be performed as frequently as scheduled by customer, but not less than every other week.

Company shall allow commercial and Multi-family dwelling unit customers to select a collection service method that best suits the needs of its premises. Specifically, the Company shall offer the following choices to commercial and multi-family dwelling unit customers:

A. Cart or Container Service

Company shall allow commercial premises and multi-family dwelling unit premises to use cart(s) or container(s) for source separated yard debris collection. Company shall provide each customer with a 65-gallon cart (or similar sizes).

B. Drop Box and Compactor Service

Company shall allow premises to use a drop box or compactor for source separated yard debris collection to meet customer's needs. In such case, Company shall provide premises with a choice of receptacle capacities ranging from 10 to 40 cubic yards. Company shall offer customers the option to purchase or lease compactors through Company or an outside vendor.

5.3.4 City Facilities

Company shall collect source separated yard debris from City facilities in accordance with Section 5.9, and shall provide all receptacles necessary for such collection.

5.4 Operations

5.4.1 Schedules

To preserve peace and quiet, no solid waste, recyclable materials, or yard debris shall be collected between 6:00 p.m. and 7:00 a.m., except for those commercial or institutional customers which the City Administrator and the Company have mutually agreed can be serviced outside of these hours. The Company shall collect solid waste, recyclable materials and yard debris Monday through Friday from residential premises and may collect solid waste, recyclable materials and yard debris from commercial premises Monday through Saturday.

Company, at its sole discretion, may choose not to provide collection services on a holiday. In such event, Company shall provide collection services on the day following the holiday. The Company shall provide the City and customers notice of holiday-related changes in collection schedules at least 10 days prior to the change; but in no case, shall Company notify customers earlier than 30 days prior to the change.

Company shall be prepared to review its operations plan outlining the collection routes, intervals of collection and collection times for all solid waste, recyclable materials, and yard debris collected under this Agreement with City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if the City determines operations are not satisfactory based on documented observations or reports or complaints. If the City determines that operations are inadequate, the Company shall revise the operations plan, incorporating any City-requested changes into a revised plan, and review the revised operations plan with City within 30 calendar days from the date City provides Company written request to revise the operations plan.

When notified of a missed pick-up by the customer within two business days of the regular scheduled collection day, Company shall collect the solid waste, recyclable materials, or yard debris on or before 5:00 p.m. of the business day

following receipt of the complaint. For residential service, a business day shall mean Monday through Friday, excluding holidays.

5.4.2 Vehicles

A. General. Company shall provide collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. Company shall have available on collection days sufficient back-up vehicles for each type of collection vehicle (e.g., cart service and container service) used to perform collection services, and respond to complaints and emergencies.

B. Specifications. All vehicles used by Company in providing solid waste, recyclable materials, and yard debris collection services shall be registered with the State of Oregon Department of Motor Vehicles. All such vehicles shall have bodies designed to prevent leakage, spillage, or overflow.

C. Vehicle Identification. The Company's name, local telephone number, and a unique vehicle identification number designated by Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers at least 2.5 inches high. Company shall not place City's name and/or any City logos on Company vehicles.

D. Cleaning and Maintenance

1) Company shall maintain all of its properties, vehicles, facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean, and operable condition at all times.

2) Vehicles used in the collection of solid waste, recyclable materials, and yard debris shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. Upon reasonable notice, City may inspect vehicles at any time to determine compliance with this Agreement. Company shall repaint or refurbish to the reasonable satisfaction of City all vehicles used in the collection of solid waste, recyclable materials, and yard debris within 30 calendar days' notice from the City, if the City reasonably determines their appearance warrants painting. Company shall also make vehicles available to the Clackamas

County Health Department and State of Oregon Department of Transportation for inspection, at any frequency it requests.

- 3) Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be removed from service until repaired and operating properly.

E. Operation. Vehicles shall be operated in compliance with the State of Oregon Vehicle Code, and all applicable safety and local ordinances. Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

Equipment shall comply with United States Environmental Protection Agency (US EPA) noise emission regulations, and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. Noise levels of equipment used for collection shall comply with City ordinance.

Subject to Section 10.1, Company shall be responsible for any damage resulting from or directly attributable to any of its operations.

5.4.3 Receptacles

A. Single-Family Dwelling Unit Solid Waste Receptacles

Company shall provide each single-family dwelling unit that pays for the basic collection service package, as well as monthly and on-call customers, with a 20-gallon, 35-gallon, 65-gallon, or 95-gallon cart (or similar size carts) for solid waste collection. Single-family dwelling unit customers shall be given an opportunity to select the initial cart size prior to the commencement date, and to change their receptacle size once each year at no charge for the receptacle exchange. Carts must have a useful life of 10 years as evidenced by manufacturer's warranty or other documentation acceptable to City.

B. Single-Family Dwelling Unit Recyclable Materials Receptacles

Company shall provide each single-family dwelling unit that pays for the basic collection service package, as well as monthly and on-call customers, with a 95-gallon cart (or similar size cart) for the collection of commingled recyclable

1 materials and a 14-gallon receptacle for the collection of glass. Additional 95-
2 gallon carts and/or 14-gallon receptacles will be provided at no charge upon
3 customer request and demonstration of need.

4 **C. Single-Family Dwelling Unit Residential Yard Debris Receptacles**

5 Company shall provide one 65-gallon cart (or similar size cart) for collection of
6 yard debris to each single-family dwelling unit that pays for solid waste
7 collection free of charge. Each additional cart shall be charged at the rate of \$5.00
8 per month. Carts must have a useful life of 10 years as evidenced by
9 manufacturer's warranty or other documentation acceptable to City.

10 **D. Non-Residential Receptacles**

11 Company shall provide customers appropriate receptacles to collect solid waste,
12 recyclable materials, and yard debris at multi-family dwelling unit premises and
13 commercial premises upon customer request. Company shall offer such
14 customers 65-gallon and 95-gallon carts; containers with capacity of 1 to 8 cubic
15 yards; or drop boxes with capacity of 10 to 40 cubic yards. The kind, size, and
16 number of receptacles furnished to a particular customer shall be as determined
17 mutually by the customer and Company. Receptacles which are serviced by
18 front-loading collection vehicles shall have attached lids. All receptacles with a
19 capacity of one cubic yard or more shall meet applicable regulations for solid
20 waste container safety, shall have reflective markings (unless the receptacle is
21 normally located in an enclosure), shall be maintained in good repair with neatly
22 and uniformly painted surfaces, and shall prominently display the name and
23 telephone number of Company.

24 **E. Removal of Receptacles**

25 Upon termination of the franchise agreement, early or otherwise, the Company
26 shall remain the owner of all receptacles. The Company shall be responsible for
27 removing all receptacles in service from premises and reusing or recycling such
28 receptacles.

29 **F. Cart Requirements**

30 **1. Specifications.** Company will provide collection services with carts having
31 the specifications, design and performance standards described in this

Section 5.4.3.F and meet requirements of applicable law with respect to stability. Carts must have a useful life of 10 years as evidenced by manufacturer's warranty or other documentation acceptable to City.

2. Materials Identification and Decals. Carts or their lids must be in bright, readily identifiable colors to facilitate customer's ready recognition of solid waste, recyclable materials, and yard debris, subject to City approval as described in this Section 5.4.3.F.

3. Secure Inventory Storage. Company will provide a secure location for inventory storage.

4. Cart Design Requirements

a. Cart Lid. Each cart must be provided with a lid that continuously overlaps and comes in contact with the cart body or otherwise causes an interface with the cart body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the cart during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the cart to conveniently and easily open and shut the lid throughout the serviceable life of the cart;
- The lid handle must be an integrally molded part of the lid;
- The lid (and body) must be of design and weight that prevents an empty cart from tilting backward when flipping the lid open; and,
- The lid must be hinged to the cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the cart body.

b. **Cart Colors.** The lids of the solid waste, recyclable materials and yard debris carts must be differentiated by color. The colors must be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Solid waste cart lids must be green. Recyclable materials cart lids must be gray. Yard debris cart lids must be brown. Company may propose other colors for carts lids or carts, which are subject to approval by the City.

c. **Identification Markings.**

In addition to the requirements in Section 5.4.3.F.2, an arrow (at least 3 inches by 5 inches) hot stamped in white color must be placed on the lid, indicating the direction of cart placement.

The words SOLID WASTE, RECYCLABLE MATERIALS OR YARD DEBRIS or other similar words approved by City must be hot stamped in white color on the lids, front or sides of the cart, as appropriate, in characters no less than two inches.

The Company's name and telephone number must be hot stamped in white color on the lids, front or sides of the cart, as appropriate in characters no less than two inches.

5. Cart Performance Requirements

a. **General.** All Carts must be designed and manufactured to meet the minimum performance requirements described below.

b. **Cart Load Capacity.** Depending on the capacity, the carts must have a minimum load capacity as noted below without cart distortion, damage, or reduction in maneuverability or any other service.

MEMORANDUM OF UNDERSTANDING
EXHIBIT A

Cart Size (Gallons)	Minimum Load Capacity (pounds)
90-101	200
60-68	130
30-35	70

c. **Cart Durability.** At a minimum, carts must meet the following durability requirements to satisfy its intended use and performance, for the term:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and be designed to be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of cart bodies must remain impervious to any damage, that would interfere with the cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

1 d. **Chemical Resistant.** Carts must resist damage from common
2 household or residential products and chemicals. Carts, also, must
3 resist damage from human and animal urine and feces.

4 e. **Stability and Maneuverability.** The carts must be stable and self-
5 balancing in the upright position, when either empty or loaded to
6 its maximum design capacity with an evenly distributed load, and
7 with the lid in either a closed or an open position.

8 The carts must be capable of maintaining its upright position in
9 sustained or gusting winds of up to 25 miles per hour as applied
10 from any direction.

11 The carts must be capable of being easily moved and maneuvered,
12 with an evenly distributed load equal in weight to its maximum
13 design capacity on a level, sloped or stepped surface.

14 f. **Lid Performance.** Cart lid assemblies must meet the following
15 minimum requirements:

- 16 • Prevent damage to the cart body, the lid itself or any component
17 parts through repeated opening and closing of the lid by
18 residents or in the dumping process as intended;
- 19 • Remain closed in winds up to 25 miles per hour from any
20 direction. All lid hinges must remain fully functional and
21 continually hold the lid in the original designed and intended
22 positions when either opened or closed or any position between
23 the two extremes; and,
- 24 • Lid must be designed and constructed such that it prevents
25 physical injury to the user while opening and closing the cart.

- 1 g. **Reparability.** Minor cracks, holes, and other damages to hinges,
2 wheels, axle, hardware, and other component parts must be readily
3 repairable by the Company personnel. Company must repair or
4 restore damaged carts to their full functionality to meet the design
5 and performance requirements as set for in this Agreement.

6 **5.4.4 Litter Abatement**

7 **A. Minimization of Spills.** Company shall use due care to prevent solid
8 waste, recyclable materials, yard debris, or fluids from leaking, being spilled,
9 and/or scattered during the collection or transportation process. If any solid
10 waste, recyclable material, yard debris or fluids leak or are spilled during
11 collection, Company shall promptly clean up all such materials. Each collection
12 vehicle shall carry a broom and shovel at all times for this purpose.

13 Company shall not transfer loads from one vehicle to another on any public
14 street, unless it is necessary to do so because of mechanical failure or accidental
15 damage to a vehicle, without prior written approval by City.

16 **B. Clean Up.** During the collection or transportation process, Company shall
17 clean up litter in the immediate vicinity of any solid waste, recyclable materials,
18 and yard debris storage area (including the areas where collection containers are
19 stored for collection). Company shall discuss instances of repeated spillage not
20 caused by Company directly with the generator responsible and will report such
21 instances to City. City will attempt to rectify such situations with the generator if
22 Company has already attempted to do so without success.

23 **5.4.5 Collection Standards**

24 **A. Servicing Receptacles.** Company shall pick up and return each receptacle to
25 the location where the owner or occupant properly placed the receptacle for
26 collection. Company shall place the receptacles upright with lids properly

1 secured. Company shall use due care when handling receptacles. Company
2 shall not throw, roughly handle, damage, or break receptacles.

3 Company, at the request of customers, shall provide special services
4 including: unlocking receptacles; accessing receptacle enclosures with a key;
5 or pulling or pushing receptacles to the collection vehicle. Company shall
6 charge customers for extra services in accordance with City-approved rates.

7 **B. Allocation of City Materials.** Solid waste, recyclable materials, and yard
8 debris collected in the City, which are combined with materials collected from
9 other jurisdictions, shall be allocated by Company to the City's collection
10 program based on volume or tonnage using a method approved by the City.

11 **C. Instructions to Customer.** Company shall instruct customers as to any
12 preparation of solid waste, recyclable materials, or yard debris and the proper
13 placement of receptacles. If customers are not adhering to Company's
14 instructions, Company shall notify such customers. In cases of extreme or
15 repeated failure to comply with the instructions, Company may decline to
16 pick-up the solid waste, recyclable materials, or yard debris provided that
17 Company leaves a tag at least two inches by six inches (2" x 6") in size on the
18 receptacle indicating the reason for refusing to collect the material. Such tag
19 shall also identify the steps generator must take to recommence collection
20 service. If recyclable materials contain 5% or greater (measured by volume)
21 of solid waste or yard debris contain 1% or greater (measured by volume) of
22 solid waste, Company shall not collect materials and shall leave a notice for
23 the customer identifying reason for non-collection. Company shall report to
24 the City on a monthly basis any warning notices issued to customers, and
25 may terminate recyclable materials and yard debris collection service upon
26 written notification of the City if, after 10 business days, high contamination
27 levels continue, unless instructed otherwise by the City.

28 **D. Care of Private Property.** Company shall not damage private property.
29 Company shall ensure that its employees: (i) close all gates opened in making
30 collections, unless otherwise directed by the generator, (ii) do not cross
31 landscaped areas, and (iii) do not climb or jump over hedges and fences.

32 City shall refer complaints about damage to private property to Company.
33 Company shall repair all damage to private property caused by its
34 employees. Company shall repair any damages to public property caused by
35 its employees to its previous condition. In the event of repeat occurrences of

property damage, the Company shall pay liquidated damages in accordance with Section 12.3.2.

E. **Noise.** All collection operations shall be conducted as quietly as possible and shall conform to applicable federal, state, county and City noise level regulations. Company will promptly resolve any complaints of noise during the morning or evening hours of the day to the satisfaction of the City.

5.4.6 Personnel

Company shall furnish all qualified drivers, mechanical, supervisory, clerical, management, and other personnel as necessary to provide the services required by this Agreement in a satisfactory, safe, economical, and efficient manner. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the State of Oregon Department of Motor Vehicles.

Company also agrees to establish and vigorously enforce an educational program that will train Company's employees in the identification of hazardous waste and infectious waste. Company's employees shall not knowingly place such hazardous waste in the collection vehicles or dispose of such hazardous wastes and infectious waste at the disposal site, processing facilities, or transfer facilities.

Company shall train its employees in customer courtesy and shall instruct collection crews to perform the work quietly. Company shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner.

Company shall provide suitable operations, health, and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in collection or other related operations.

5.4.7 Identification Required

Company shall provide its employees and subcontractors with identification for all individuals who may make face-to-face contact with residents or businesses in City.

5.4.8 Fees and Gratuities

Company shall not, nor shall it permit any agent, employee, or subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the collection and transportation of solid waste, recyclable materials, or yard debris. Compensation or gratuity shall exclude holiday gifts.

5.4.9 Non-Discrimination

Company shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap, or medical condition in violation of any applicable federal or state law.

5.4.10 Change in Collection Schedule

Company shall notify the City at least 30 calendar days prior to, and residential customers not later than 2 weeks prior to, any change in the residential collection schedule which results in a change in the day on which solid waste, recyclable materials, and yard debris collection occurs. Company will not permit any customer to go longer than the customer's scheduled service frequency in connection with a collection schedule change. City's approval of any change in residential collection is required prior to such change, and such approval will not be withheld unreasonably.

5.4.11 Report of Accumulation of Solid Waste; Unauthorized Dumping

Company shall direct its drivers to note (1) the addresses of any premises at which they observe that solid waste, recyclable materials, or yard debris is accumulating and is not being delivered for collection; and (2) the address, or other location description, at which solid waste, recyclable materials, or yard debris has been dumped in an apparently unauthorized manner. Company shall deliver the address or description to City within two business days of such observation.

5.5 Contingency Plan

Company shall submit to City on or before the commencement date of the Agreement, a written contingency plan demonstrating Company's arrangements

to provide vehicles and personnel and to maintain uninterrupted service during breakdowns, and in case of natural disaster or other emergency (not including a labor dispute), including the events described in Section 12.4.

5.6 Recyclable Materials and Yard Debris Processing

5.6.1 Processing

Company agrees to transport and deliver all recyclable materials and yard debris it collects in the City to the approved processing sites. Company shall arrange for separate processing of commingled recyclable materials and glass. Company shall arrange for disposal of residue from the recyclable materials and yard debris at a disposal site selected by Company.

Company shall pay all costs associated with transporting recyclable materials and yard debris to the processing site(s) as well as any processing costs. The processing sites selected by Company shall be approved by the City at least 90 days prior to use of such sites.

Company shall keep all existing permits and approvals necessary for use of the processing site(s) in full regulatory compliance. Company shall, upon request, provide copies of notices of violation or permits to the City.

If Company elects to use a processing site that is different from the approved processing site, it shall secure prior written approval from the City. The City shall not compensate the Company for any increased transportation and processing costs associated with the use of processing site(s) different from the approved processing site(s).

5.6.2 Transfer

If the Company (i) transports recyclable materials or yard debris to a transfer station where the materials will be unloaded from collection vehicles and loaded into large-capacity vehicles and transported to the processing site(s) or (ii) pulls two or more Collection trailers in tandem with one truck, and the Company is unable to do so then the Company shall be responsible for making other transportation arrangements. In such event, Company shall not be compensated for any additional costs. If the Company plans to change its transfer method, Company shall obtain written approval from the City prior to making the

change. The City shall approve the transfer method and the facility(ies) Company proposes to use.

All costs associated with transporting recyclable materials and yard debris to the transfer station as well as any transfer costs shall be paid by Company. Company agrees to use approved transfer station and such site approval shall be obtained from the City at least 90 days prior to use of such site, unless an emergency exists and an immediate location is necessary to dispose of the materials collected.

5.6.4 Marketing

The Company shall be responsible for marketing or arranging for marketing of recyclable materials and yard debris it collects in the City. With respect to yard debris, Company shall make, or arrange for making of, end products (e.g. compost) or develop end uses for materials that maximize the recovery rate as calculated in accordance with Chapter 459A of ORS. Company shall not use yard debris for the purposes of alternative daily cover (ADC) or for transformation fuel, unless prior written approval is obtained from the City.

Upon request, Company shall provide proof to the City that all recyclable materials and yard debris collected are marketed for recycling or reuse in such a manner that maximize the City's recovery rate as calculated in accordance with Chapter 459A of ORS. All residual material from the processing activities that is not marketed for use shall be accounted for as disposal tonnage at a permitted disposal site. No recyclable materials or yard debris shall be transported to a domestic or foreign location if solid waste disposal of such material is its intended use for landfill disposal.

5.6.5 Disposal of Recyclable Materials and Yard Debris Prohibited

Recyclable materials and yard debris may not be disposed of in lieu of recycling the material, without the expressed written approval of the City. If Company believes that it cannot divert the recyclable material or yard debris from disposal, then it shall prepare a written request for approval to dispose of such material. Such request shall contain the basis for its belief, describe the Company's efforts to arrange for the diversion from disposal of such material, the period required for such disposal, the incremental costs or cost savings resulting from such

disposal, and any additional information supporting the Company's request. The City shall consider the Company's request and inform Company in writing of its decision within 30 calendar days. If the City approves such request, any difference in the cost of such disposal compared to diversion shall be adjustment in accordance with Section 7.5.

5.6.6 Record Keeping

Company shall maintain accurate records of the quantities of recyclable materials and yard debris transported to the transfer station and/or approved processing sites and will cooperate with City in any audits or investigations of such quantities.

5.7 Disposal of Solid Waste

5.7.1 Disposal

Company shall select a disposal site and secure sufficient capacity to dispose of all solid waste collected under this Agreement. The disposal site selected by Company shall be approved by the City at least 90 days prior to use of such site, unless an emergency exists and an immediate location is necessary to dispose of the materials collected.

Company shall keep all existing permits and approvals necessary for use of the disposal site in full regulatory compliance. Company shall, upon request, provide copies of notices of violation or permits to the City.

Company shall transport to and dispose of all solid waste collected in the City at the approved disposal location. Company shall pay all costs associated with the transporting and disposing of solid waste. Disposal costs shall include all regulatory fees and other surcharges.

If the disposal site becomes unable to accept and dispose of City's solid waste for reasons outside the Company's control, the Company shall, with the prior approval of City, to the extent it is legally able to do so, transport and dispose of City's solid waste at another disposal site that results in the lowest possible transportation and disposal cost.

1 Company may dispose of residue from recyclable materials or yard debris at any
2 disposal site selected by the Company.

3 **5.7.2 Transfer**

4 Company may use an approved transfer station to handle solid waste collected
5 in the City in accordance with Section 5.6.2

6 **5.7.3 City Right to Select Disposal Site**

7 The Company shall select the approved disposal site subject to the City's
8 approval. The City reserves the right to direct Company to a disposal site other
9 than that selected by Company if the approved disposal location specified on the
10 effective date is not owned or operated by the Company or by a company
11 affiliated with the Company. In such case, Company shall be released from its
12 indemnification obligation in Section 10.1 and 10.2 as it relates to actions or
13 negligence of the owner and operator of the City-selected disposal site, and the
14 City shall adjust Company's compensation in accordance with procedures for a
15 City-directed change in scope in accordance with Section 3.3. City shall provide
16 written notice to Company not less than 90 days before effective date of the
17 change.

18 **5.7.4 Company Right to Propose Alternative Sites**

19 The Company has the right to propose an alternative disposal site, recyclable
20 material processing site, yard debris processing site or transfer station. In such
21 case the Company shall make a formal written request to the City and shall
22 provide the City with all operational and cost data to support any adjustment to
23 the rates. The City reserves the right, at its sole discretion, to accept or reject the
24 Company's proposed site. If the City rejects the Company's proposed site there
25 shall be no change to the approved disposal site, approved recyclable material
26 processing site, approved yard debris processing site or approved transfer
27 station. If the City accepts the Company's proposal, the Company's proposed
28 disposal site, recyclable material processing site, yard debris processing site or
29 transfer station shall become the new approved sites or transfer station. In such
30 case, any and all requirements, indemnifications etc. associated with the then
31 current approved disposal site, approved recyclable material processing site,
32 approved yard debris processing site or approved transfer station shall apply to

and/or be required of the new approved sites or transfer station.

5.7.5 Record Keeping

Company shall maintain accurate records of the quantities of solid waste transported to the transfer station and/or disposal site and will cooperate with City in any audits or investigations of such quantities.

5.8 Service Exceptions; Hazardous Waste Notifications

5.8.1 Hazardous Waste Inspection and Reporting

Company reserves the right and has the duty under law to inspect solid waste, recyclable materials, and yard debris placed in receptacles for collection and to reject solid waste, recyclable materials, and yard debris observed to be contaminated with hazardous waste and the right not to collect hazardous waste deposited with solid waste, recyclable materials, or yard debris. Company shall notify all agencies with jurisdiction, if appropriate, including the State of Oregon DEQ and local emergency response providers and the national response center of reportable quantities of hazardous waste found or observed in solid waste, recyclable materials, and yard debris anywhere within City. In addition to other required notifications, if Company observes any substances which it or its employees reasonably believe or suspect to contain hazardous wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, Company will immediately notify the City Administrator or the City Administrator's designee.

5.8.2 Generator Notification

When solid waste, recyclable materials, or yard debris is not collected from any residential generator, Company shall notify the generator in writing, at the time collection is not made, through the use of a "tag" (at least two inches by six inches in size) or otherwise, of the reasons why the collection was not made. When solid waste, recyclable materials or yard debris is not collected from any commercial generator, Company shall notify customer by phone of the reasons why the collection was not made.

5.8.3 Hazardous Waste Diversion Records

Company shall maintain records showing the types and quantities, if any, of hazardous waste found in solid waste, recyclable materials and yard debris and which was inadvertently collected from service recipients within City, but diverted from disposal.

5.9 Collection from City Facilities at no charge to City.

Company shall collect solid waste, recyclable materials and yard debris from City locations at the service levels and collection frequency identified in Exhibit 1. Such collection shall occur at least once per week or more frequently as requested by the City. Company shall provide and maintain collection receptacles for the City's use.

Company may integrate collection of solid waste, recyclable materials and yard debris from City facilities with other collection services, provided that Company attributes estimated tonnage collected from City facilities separately from other customers.

Company shall provide the above services required by this Section at no charge to the City.

Company shall collect and dispose of biosolids generated by the Waste Water Treatment Plant at no charge to the City for up to the first 150 tons collected in a calendar year. Any biosolids collected above the initial 150 tons within the calendar year may be billed to the City by the Company at its usual and customary rate.

Collection of solid waste, recyclable materials or yard debris involving additional public work projects around the City such as building demolition materials, street or other construction materials generated at sites located away from the City Shops may be billed to the City by the Company at its usual and customary rate.

5.10 Annual Cleanup Day

Company shall sponsor an Annual Cleanup Day event for residents during a week in April or May of each year. The Company will not charge a fee for picking up extra or additional items that local customers place in containers or

1 leave at the curb during the scheduled days of the Cleanup. Company will
2 provide a written notice to customers at least thirty (30) day of the event.

3 No paint or hazardous waste will be picked up curbside during the event.

4 City and Company may jointly review this annual cleanup process and make
5 recommended changes when needed to address issues associated with the
6 amount, type and containment of waste disposed of on the annual cleanup day.

7 **5.11 Motor Oil Collection**

8 On a weekly basis, Company shall collect from single-family dwelling units and
9 multi-family dwelling units used motor oil placed curbside for collection in
10 customer-provided containers. Company shall not be required to collect more
11 than two gallons of used motor oil per individual dwelling unit per week.
12 Company shall recycle, or arrange for recycling, all used motor oil collected.

13 **5.12 Infectious Waste Collection**

14 Company shall collect, transport, process, and dispose of infectious waste from
15 residential and commercial premises. The collection frequency and method of
16 collection shall be mutually agreed upon by the Company and the generator.

ARTICLE 6
OTHER SERVICES

6.1 Services and Customer Billing

6.1.1 Service Description

Company shall annually, and with every service start, prepare and distribute, subject to the direction of City, a notice to each owner or occupant of property entitled to service under this Agreement the annual holiday schedule, and a general summary of services required to be provided hereunder and optional service which may be furnished by Company. Such notice shall be in a form subject to City's approval prior to its distribution and may be included with billings made by Company. Collection rates and a list of services offered will be provided to customers who request such information directly from Company.

6.1.2 Billing

Company shall bill and collect from persons receiving collection services at rates set by City. City shall approve the form and content of the billing statements, with such approval not to be unreasonably withheld. Billing shall be performed monthly, every other month, or quarterly for each account, but in no event less frequently than once per quarter. Company may terminate collection service to solid waste accounts that become more than 60 calendar days past due, following 30 calendar days written notice. Company shall promptly restore service when the delinquent charges, including reinstatement charges, have been paid in full. The Company may require a deposit from customers who are habitually delinquent.

6.1.3 Customer Billing List

Company shall prepare a complete customer billing list (containing the number of accounts by service category) annually and submit such list to the City in accordance with Section 9.3.3.

6.1.4 Review of Billings

At least annually, Company shall review its billing records to determine that the amount the Company bills each customer is correct in terms of the level of

service (i.e., frequency of collection, size of receptacle, and location of receptacle) being provided to such customer by Company. Company shall distribute new route books to its drivers as needed to reflect changes in customer service levels that are consistent with billings. Route supervisors shall periodically check the routes to ensure that drivers are providing service in accordance with their route books, which are to be consistent with billings.

For inspection by the City upon request, Company shall maintain copies of said billings for a period of five years after the date of service and copies of receipts for a period of two years after the date of service, each in chronological order. Company may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

6.2 Customer Service

6.2.1 Company Office

The Company's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of holidays. A responsible and qualified representative of Company shall be available during office hours for communication with the public. Company shall maintain a local or toll-free telephone number for use by customers. Company's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Company shall have a representative, answering the telephone or voice-mail service available at said after-hours telephone number.

6.2.2 Complaint Documentation and Response

The City and Company shall instruct persons with service complaints to direct complaints to Company. Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by Company to respond to and remedy complaint.

All written customer complaints and inquiries shall be date-stamped when received and shall be initially responded to within one business day of receipt.

Company shall log action taken by Company to respond to and remedy the complaint.

Daily logs of complaints concerning collection of solid waste, recyclable materials, and yard debris shall be retained for a minimum of 24 months and shall be available for review by City during business hours and at no cost. City shall, at any time during regular Company business hours, have access to Company's customer service department for purposes that may include monitoring the quality of customer service or researching customer complaints.

6.2.3 Resolution of Customer Complaints

A customer dissatisfied with Company's decision regarding a complaint may ask City to review the complaint. Company shall provide the customer with the telephone number of the City Liaison, as designated in accordance with Section 6.2.4. The City Liaison shall contact Company's Government Liaison (as designated in accordance with Section 6.2.4) to request additional information and ask Company to respond to the complaint. Company shall attempt to cure the complaint and notify City Liaison by telephone or in writing of resolution.

If the customer is still dissatisfied, the matter may be referred to the City Administrator. The decision of City Administrator or his/her designee shall be final on any matter. Nothing in this Section is intended to affect the remedies of third parties against Company.

6.2.4 Liaisons

Upon execution of this Agreement, Company shall designate in writing a "Government Liaison" who shall be responsible for working with City Administrator and/or City's designated representative(s) to resolve customer complaints. City shall designate in writing a "City Liaison" who shall be responsible for working with Company and/or Company's designated representative to resolve customer complaints. The parties shall inform each other of changes in these representations within two business days of the change.

6.3 Public Education

6.3.1 Education Requirements

Company public education program shall focus on providing information to customers to comply with requirements of ORS 459A.010(2)(c), which generally requires a public education program to inform solid waste generators of the manner and benefits of reducing, reusing, recycling and composting material and to promote use of recycling services. At a minimum, the Company shall provide the following public education:

- A. **Service Initiation.** Education materials shall be distributed to all residents and businesses prior to the commencement of services describing the collection services offered by the Company and rates for such services, and soliciting customer's preferences regarding receptacle size and collection frequency for solid waste, recyclable materials, and yard debris. These educational materials shall also educate customers about source reduction, reuse, and recycling opportunities.
- B. **New customer education.** Education materials shall be provided to all new collection service customers that include recyclable materials collection notification and education packets that include, at a minimum, the materials collected, the schedule for collection, the way to prepare materials for collection and the reasons persons should separate recyclable materials and yard debris for separate collection. The educational and promotional materials provided to commercial collection customers should be targeted to meet the needs of various types of businesses and should include reasons to recycle, including economic benefits, common barriers to recycling and solutions, additional resources for commercial generators of solid waste and other information designed to assist and encourage recycling efforts. The educational and promotional materials provided to commercial collection customers shall encourage each commercial collection customer to have a goal to achieve 50 percent recovery from its solid waste stream.
- C. **Annual promotion.** Education materials at least annually to all collection service customers, of the information under subsection B above.

1 **D. Other promotion.** Education materials or events targeting of community and
2 media events to promote recycling.

3 **6.3.2 Format of Promotional Materials**

4 Company's educational media may include newsletters, flyers, door hangers,
5 notification tags, and direct contact. Materials shall be printed on paper
6 containing the highest levels of recycled content material as is reasonably
7 practical with a minimum requirement of 30% post-consumer content based on
8 Federal standards.

9 **6.3.3 Cooperation with County Efforts**

10 From time to time, Clackamas County prepares public education information
11 that includes data on the City's programs and provides education and technical
12 assistance to residents and businesses in the City. The Company shall cooperate
13 with Clackamas County by: (i) providing, upon the County's request,
14 information regarding the collection, processing, and disposal services provided
15 in the City, and (ii) responding to County inquiries or requests related to specific
16 customers.

17 **6.4 Waste Generation and Characterization Studies**

18 Company acknowledges that City must perform solid waste generation and
19 disposal characterization studies periodically to comply with ORS 459A.035.
20 Company agrees to participate and cooperate with City and its agents and to
21 accomplish studies and data collection and prepare reports, as needed, to
22 determine weights and volumes of Solid waste and characterize solid waste
23 generated, disposed, diverted or otherwise handled or processed.

ARTICLE 7
COMPANY'S COMPENSATION AND RATES

7.1 Company's Compensation

The Company's compensation for performance of all its obligations under this Agreement shall be the actual gross rate revenues remitted to Company by customers less fees due to the City and County in accordance with Article 4. Company's compensation provided for in this Article shall be the full, entire, and complete compensation due to Company pursuant to this Agreement for all labor, equipment, materials and supplies, processing and disposal fees, taxes, insurance, bonds, overhead, operations, profit and all other things necessary to perform all the services in the manner required by this Agreement.

If Company's costs are more than the actual gross rate revenues retained by Company, Company shall not be compensated for the difference in costs and revenues. If Company's costs are less than the actual gross rate revenues retained by the Company, Company shall retain the difference. In addition, calculations of rates shall not be adjusted for variances of actual costs or revenues during prior periods of time.

7.2 Rates

Under this Agreement, Company shall have the right and obligation to charge and collect from customers, rates that are approved by the City. The rates, which are contained in Exhibit 2, are set by City Council Resolution and are effective July 1, 2010. The Company shall bill customers and collect payments in accordance with the rates set forth in Exhibit 2 and pursuant to Section 6.1.

The rates shall be fixed, as per Exhibit 2, for rate period one, commencing July 1, 2010 and ending June 30, 2011, and shall not be adjusted to reflect either increases or decreases in costs from those anticipated by Company. The rates shall be adjusted annually, with City Council approval, commencing July 1, 2011 through the remaining term of this Agreement including any extension periods, as described in Section 7.3.

The City reserves the right to adjust rate relationships in the future provided that the Company is made whole in terms of gross revenues.

7.3 Annual Adjustment of Rates

7.3.1 Annual Adjustment

Subject to the terms herein, the Company shall be entitled to an annual adjustment of all rates. Each rate includes an operating component and tipping fee component, which are annually adjusted. The City Council shall make a good faith effort to approve adjusted rates by May 15 of each year, and such rates shall be effective on each July 1. If rate adjustments are not approved by May 15, then prior rates remain in effect until such adjustment is made.

The first adjustment is scheduled to take effect July 1, 2011 subject to City Council approval. Each rate is annually adjusted as specified in Section 7.3.2 through 7.3.4.

7.3.2 Adjustment of the Operating Component

The operating component of the rates specified in Exhibit 2 shall be adjusted annually, using the method below, to reflect 80% of the change in the All Urban Consumers Index Half1 (CPI-U) compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency, using the following parameters, or by 5%, whichever is less.

CPI-U Parameters:

- Area - Portland - Salem, OR - WA
- Item - All Items
- Base Period - Current 1982-84=100
- Not seasonally adjusted
- Periodicity - Semi-annual

Step 1: Calculate the Change in Half1 CPI-U as follows:

Change in Half1 CPI-U = ((Most current Half1 CPI-U - previous 12-month Half 1 CPI-U)/previous 12-month Half1 CPI-U)) x 0.80) or 0.05, whichever is less

Step 2: Calculate the Adjusted Operating Component as follows:

Adjusted Operating Component = Then-current Operating Component x (1 + the Change in Half1 CPI-U as calculated in Step 1 above)

The Operating Component shall be rounded to the nearest cent.

For example, assuming:

1. Most-recently published Half1 CPI-U (Half1 2003) = 186.0
2. Half1 CPI-U published 12 months prior (Half1 2002) = 183.5
3. Then-current Operating Component = \$5.00

Change in Half1 CPI-U = $((186.0 - 183.5)/183.5) \times 0.80 = 0.0109$,
which is less than 0.05; therefore, the Change in Half1 CPI-U is
0.0109

Adjusted Operating Component = $\$5.00 \times (1 + 0.0109) = \5.05

If the CPI-U is discontinued or revised during the term by the United States Department of Labor, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI-U had not been discontinued or revised.

7.3.3 Adjustment of the Tipping Fee Component

The solid waste disposal and yard debris processing tipping fee component of each rate will be adjusted to reflect any percentage change in the per-ton tipping fees charged at the approved transfer station and the approved yard debris processing site, as appropriate. There shall be no adjustment to the recyclable materials processing tipping fee component of each rate over the term of the Agreement. The tipping fee component adjustment shall equal:

Adjusted Tipping = Then-current Tipping Fee Component x (Current
Fee Component Approved Tipping Fee / Prior Approved Tipping
Fee)

For example, assuming:

1. Then-current Tipping Fee Component = \$1.50, which includes a solid waste disposal component = \$1.00 and Yard debris processing component = \$0.50
2. Current approved tipping fee for the approved disposal location = \$30.00 per ton
3. Prior approved tipping fee for the approved disposal location = \$28.80 per ton

4. Current approved tipping fee for the approved yard debris processing location = \$5.00 per ton
5. Prior approved tipping fee for the approved yard debris processing location = \$4.75 per ton
6. Adjusted tipping fee component = $\$1.00 \times (\$30.00 / \$28.80) + \$0.50 \times (\$5.00 / \$4.75) = \$1.04 + \$0.53 = \$1.57$

The adjusted tipping fee component shall be rounded to the nearest cent.

The prior approved tipping fee is the fee last used to set rates. As of the effective date of this agreement, the approved transfer station tipping fee is \$70.50 per ton; and the approved processing site location tipping fee for yard debris is \$9.50 per compacted yard. These fees shall be used as the prior approved tipping fee for the first adjustment of the tipping fee components.

7.3.4 Calculation of Adjusted Rates

Adjusted Rates shall be calculated as follows:

$$\begin{array}{lcl} \text{Adjusted} & = & \text{Adjusted Operating Component} + \text{Adjusted Tipping Fee} \\ \text{Rate} & & \text{Component} \end{array}$$

For example, assuming:

1. The rate being adjusted is a residential solid waste collection rate
2. Adjusted operating component = \$5.05 (as calculated in Section 7.3.2)
3. Adjusted tipping fee component = \$1.57 (as calculated in Section 7.3.3)

$$\text{Adjusted collection rate} = \$5.05 + \$1.57 = \$6.62$$

7.4 Annual Rate Application Process

On or before April 1 of each rate Period, Company shall submit an application requesting the rate adjustment for the following rate period. The application shall present each rate for the then-current rate period and calculation of each adjusted rate for the following rate period. The application shall include all supporting documentation for calculation of the adjusted rates including CPI-U and tipping fee data.

The Company's rate application shall be reviewed by the City. The City Council shall adjust rates to reflect the adjustments made in accordance with Section 7.3.

The City Council shall act in good faith to approve such rate adjustments by May 15 of each year so that approved rates take effect at the commencement of the rate Period. Notwithstanding the provisions of Section 7.3, the adjusted rates will not take effect until the City Council has approved such rates.

If the Company submits its rate application on or before April 1, and the City does not adjust rates to be effective on or before July 1 of a rate period, the City shall include a surcharge on the rates that shall be effective for the remainder of the rate period to recover revenues lost by the Company, if any. If the effective date of the rates is September 1 or later, the City shall adjust the rates to recoup lost revenues, if any, as well as interest due the Company on lost revenues, where interest shall be calculated using the most-recently published average daily interest rate for the Oregon Local Government Investment Pool (LGIP) published by the Oregon State Treasurer's office. To determine the amount of lost revenues, if any, the City and Company shall meet and confer to determine the effect the delay in adopting rates has on the Company's revenue. The assessment of the revenue impact shall consider the Company's billing cycle (e.g., impact to Customers billed in advance and to Customers billed in arrears), the ability of Company to delay issuance of bills, the payment cycle of Customers, and other variables.

If the Company does not submit the application by April 1, rates may not be adjusted by May 15. In such case, all rates shall be adjusted to be effective the first of the month of the next billing cycle following approval by the City Council. If the Company does not submit the application by April 1, no retroactive adjustment will be made to allow the Company to recover revenues that it would have collected, had the rate adjustment been implemented in accordance with the prescribed schedule.

7.5 Special Rate Review

7.5.1 Eligible Items

The Company is entitled to apply to the City for consideration of a special rate review, or the City may initiate such a review, should one or more events listed in this section occur. If the occurrence of such event or combination of events, has a material effect on the Company's cost of service of \$25,000 or more annually, the City shall be obligated to perform a special Rate review; however,

1 if the occurrence of such event(s) has less than a \$25,000 effect on the Company's
2 annual cost of service, the City shall not be obligated to conduct the review.
3

- 4 1. Documented significant changes in the cost to provide services required in
5 this Agreement as a result of an agreed-upon, City-directed change in
6 scope, as provided for under Section 3.3.
- 7 2. Flood, earthquake, other acts of nature, war, civil insurrection, riots, or
8 other similar catastrophic events beyond the control of Company.
- 9 3. Change in law after the effective date that: (1) was not reasonably known
10 to the Company before the effective date, and (2) the Company
11 substantiates such claim.
- 12 4. The number and type of customers differs significantly from the number
13 and type of customers being serviced by the Company on the date this
14 Agreement is executed, and Company submits an application for a special
15 rate review for this reason no later than September 1, 2010.
- 16 5. The calculated change in Half1 CPI-U in accordance with Step 1 of Section
17 7.3.2 is equal to or greater than 0.05.
- 18 6. Fuel price increases that result in a direct increase of more than 3% in the
19 Company's cost of providing services required by this Agreement.

20 **7.5.2 Ineligible Items**

21 The Company will not be compensated over the term for:
22

- 23 1. Increases in the cost of solid waste, recyclable materials, or yard debris
24 collection, transportation, processing, or disposal costs in excess of the
25 increases provided through the annual adjustment mechanism described in
26 Section 7.3 unless cost increases are related to eligible items listed in Section
27 7.5.1.
- 28 2. Increases in the cost of solid waste, recyclable materials, or yard debris
29 collection, transportation, processing, or disposal costs that may be impacted
30 by change in approved disposal location, approved transfer station, or
31 approved processing site operating conditions, unless such change is initiated
32 by or at the direction of the City.
- 33 3. Decreases in revenues from the sale of recyclable materials or yard debris.

- 1 4. Growth or decline in the number of customers or their subscription levels;
2 however, the Company shall be entitled to bill all customers at the rates set
3 forth herein and retain all rate revenues net fees due to City collected from
4 its customers for collection services provided under this Agreement.
- 5 5. Changes in the number of accounts related to receptacle sizes or frequency of
6 collection; however, the Company shall be entitled to bill all customers at the
7 rates set forth herein and retain all rate revenues net fees due to City
8 collected from Company's customers for collection services provided under
9 this Agreement.
- 10 6. Change in the tonnage or composition of solid waste, recyclable materials, or
11 yard debris.

12 **7.5.3 Review of Costs**

13 If the Company or the City requests a special rate review, the City shall have the
14 right to review any or all financial and operating records of Company and
15 related-party entities. The cost of the special rate review incurred by the City
16 and its agents shall be recovered through the rates if the City approves that
17 requested rate adjustment. The Company shall pay the City for costs associated
18 with the review incurred by the City and its agents if the City does not approve
19 the requested rate adjustment or if said review is initiated by the City.

20 **7.5.4 Submittal of Request**

21 If the Company is requesting a special rate review, the Company must submit its
22 request for a special review of rates, and cost and operational data, in a form and
23 manner specified by the City, at least 90-days before the proposed effective date
24 of any rate adjustment.

25 If City is requesting a special rate review, the City shall notify the Company at
26 least five months before the proposed effective date of any rate adjustment.
27 Upon such notification, Company shall, within 30 calendar days, submit
28 reasonable cost and operational data as requested by the City, in a form and
29 manner specified by the City.

30 A request for special rate review shall include a proposal on whether the rate
31 adjustment resulting from the special rate review will be an adjustment in
32 addition to or in lieu of the annual rate adjustment to be performed in
33 accordance with Section 7.3.

7.5.5 Burden of Justification

Company shall bear the burden of justifying to the City by substantial evidence any entitlement to current, as well as increased rates under this Section 7.5. If the City determines that the Company has not met its burden, the Company may request one hearing to produce additional evidence. Upon such request, the City shall permit said additional hearing. In the event the City denies Company's request, Company shall have the right to present its claim in a court of competent jurisdiction.

7.5.6 Grant of Request

Based on evidence the Company submits, the City Council may grant some, all or none of the requested increase and approve adjusted rates.

7.6 Rates for Changes in Scope

In the event either the City or Company requests a change in scope in accordance with Section 3.3, the Company shall furnish the City with projected operational and cost data for the change in scope to support any adjustment to rates. For the purposes of analyzing cost impacts of changes in scope, the Company's profit shall be calculated using an operating ratio of 88% of actual reasonable and necessary costs net of disposal expenses and franchise fees. The City reserves the right to require that the Company supply any additional cost data or other information it may reasonably need to ascertain the appropriate rate adjustment, if any, for the change in scope. The City shall review this operational and cost data, and the City Council shall establish rates for the change in scope, if warranted.

The granting of any change in scope shall be contingent upon City approval and establishment of new rates. The City shall adjust rates, in good faith, coincident with any adjustment made pursuant to this Section so that the change in scope and the corresponding rates become effective on the same date.

7.7 Notice of Rate Adjustments

The Company shall provide all customers with advance written notice of approved rate changes, in the form of a bill insert at least 30 calendar days before the effective date of such changes.

7.8 Market Test of Rates

The City shall have the right to conduct a market test of the rates that Company charges customers in comparison with rates charged customers in cities and counties in the surrounding area of similar size and with similar collection programs provided that such comparison includes adjustments to rates to reflect differences related to local fees (including franchise fees) and the City pays for the market test analysis. If the Company's rates are not ranked comparable to these communities, the City shall have the right to conduct a detailed, comprehensive operational and financial review of the Company's operations to determine the reasonableness of Company's compensation requirement and make reasonable reductions to the Company's compensation based on such review, if the City determines the Company's compensation is not reasonable. The Company shall cooperate with the City's operational and financial review. The adjustment to compensation shall be conducted in a manner equivalent to the special rate review procedures described in Section 7.5.

In the event the City conducts a market test of the rates that the Company charges in comparison with rates charged other cities and counties as set forth in the paragraph above, and the Company's rates are not ranked comparable, the Company shall reimburse the City for its costs in conducting the market test.

ARTICLE 8
REVIEW OF SERVICES AND PERFORMANCE

8.1 Performance Hearing

Annually City may, but is not required to, hold a public hearing on or about 90 calendar days after receipt of the Company's annual report (required by Section 9.3.3) at which time Company shall be present and shall participate, to review the solid waste, recyclable materials, and yard debris collection services and overall Company's performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in collection to achieve a continuing, advanced solid waste, recyclable materials, and yard debris collection system; and to ensure services are being provided with adequate quality, effectiveness, and economy.

Forty-five calendar days after receiving notice from City of a solid waste, recyclable materials, and yard debris collection services and performance review hearing, Company shall, at a minimum, submit a report to City indicating the following:

- a) Changes recommended and/or new services to improve collection services and to contain costs and minimize impacts on rates.
- b) Any specific plans for provision of changed or new services by Company.

The reports required by Section 9.3.2 of this Agreement regarding customer complaints may be used as one basis for review. Company may submit other relevant performance information and reports for consideration. City may request, and Company shall submit, specific information related to the performance for the hearing. In addition, any customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the collection services and performance preview hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, customer complaints, amendments to this Agreement, developments in the law, regulatory

MEMORANDUM OF UNDERSTANDING
EXHIBIT A

1 constraints, and Company performance. City and Company may each select
2 additional topics for discussion at any hearing.

3 Not later than 60 calendar days after the conclusion of each collection services
4 and performance review hearing, City may issue a report. As a result of the
5 review, City may require Company to provide expanded or new services within
6 a reasonable time and for reasonable rates and compensation, as determined in
7 the City Council's good faith legislative discretion, and City may direct or take
8 corrective actions for any performance inadequacies.

ARTICLE 9
RECORDS, REPORTS AND INFORMATION REQUIREMENTS

9.1 General

Company shall maintain such accounting, statistical, and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, Company agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and solid waste, recyclable materials, and yard debris program management needs of City. To this extent, such requirements set out in this and other articles of this Agreement shall not be considered limiting or necessarily complete. In particular, this article is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of City, the records and reports to be maintained and provided by Company in accordance with this and other articles of the Agreement shall be adjusted in number, format, or frequency. The foregoing is not intended to require significant additional administrative labor or the modification of Company's computer software.

9.2 Records

9.2.1 General

Company shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of City business. All records shall be maintained for five years after the expiration of this Agreement, with the exception of accounts payable records, which will be maintained for three years after payment.

Company agrees that the records addressed in the Agreement shall be provided or made available to City and its official representatives during normal business hours.

9.2.2 Financial Records

Financial records shall be maintained in a manner such that cost and revenue information can be allocated among the service types (residential, commercial and drop box) and to the City.

9.2.3 Solid Waste, Recyclable Materials, and Yard Debris Records

Records shall be maintained by Company for City relating to:

- a) Customer services and billings;
- b) Weight and volume of solid waste, recyclable materials and yard debris collected. Information is to be separated between single-family dwelling unit, commercial premises, and drop box collection service. If solid waste, recyclable materials, and yard trimmings collected in the City are combined with materials collected from other jurisdictions, Contractor shall allocate weight and volume of such material to the City's collection program based on volume or tonnage using a method approved by the City.
- c) Routes;
- d) Facilities, equipment, and personnel used;
- e) Facilities and equipment operations, maintenance and repair;
- f) Disposal of solid waste;
- g) Processing of recyclable materials;
- h) Processing of yard debris;
- i) Complaints; and,
- j) Missed pick-ups.

9.2.4 CERCLA Defense Records

City views the ability to defend against CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC §9601, et seq.) and related litigation as a matter of great importance. For this

reason, City regards the ability to prove where solid waste collected in City was taken for disposal, as well as where it was not taken, to be matters of concern. Company shall maintain data retention and preservation systems which can establish where solid waste collected in City was land-filled (and therefore establish where it was not land-filled) and provide a copy or summary of the reports required in Sections 5.7, 9.2.3, and 9.2.5 for five years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to City. Company agrees to notify City's Risk Manager and City Attorney before destroying such records. This provision shall survive the expiration of the period during which collection services are to be provided under this Agreement.

9.2.5 Disposal Records

Company shall maintain records of disposal of all solid waste collected in City for the term of this Agreement or successor Agreements. In the event Company discontinues providing solid waste services to City, Company shall provide all records of disposal or processing of all solid waste collected in City within 30 calendar days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

9.3 Reports

9.3.1 Report Formats and Schedule

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- a) Determine and set rates and evaluate the financial efficacy of operations;
- b) Evaluate past and expected progress towards achieving diversion goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate customer service and complaints.

Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report will be mutually agreed upon by City and Company. Company agrees to submit all reports on computer discs or via e-mail in a mutually agreed upon format at no additional charge, if requested by City. Company will provide a certification statement, under penalty of perjury, by the responsible Company official, that the report being submitted is true and correct.

Quarterly reports shall be submitted no later than 45 calendar days after the end of the quarter. Quarters end on September 30, December 31, March 31, and June 30. Annual reports shall be submitted before September 30 following the end of the rate period.

All reports shall be submitted to:

City Administrator
City of Canby
P.O. Box 930
Canby, OR 97013

9.3.2 Quarterly Reports

The information listed shall be the minimum reported for each service:

A. Regular Services

- 1) Solid waste collected monthly by Company in tons, listed separately for single-family dwelling units and commercial premises and the disposal site used.
- 2) Recyclable materials collected monthly by Company in tons, listed separately for single-family dwelling units and commercial premises and the processing facility used.
- 3) Yard debris collected monthly by Company in tons, listed separately for single-family dwelling units and commercial premises and the processing facility used.
- 4) Complaint summary, for month and cumulative for rate period, summarized by nature of complaints.

- 5) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for City, as appropriate.
- 6) A summary or copy of the hazardous waste records required in Section 5.8.
- 7) Other information or reports that City may reasonably request or require.

B. Summary Assessment. Provide a summary assessment of the overall solid waste, recyclable materials, and yard debris program from Company's perspective relative to financial and physical status of program. The physical status is to relate to how well the program is operating for efficiency, economy, and effectiveness relative to meeting all the goals and objectives of this Agreement and ORS 459A. Provide recommendations and plans to improve. Highlight significant accomplishments and problems.

9.3.3 Annual Report

The Annual Report is to be essentially in the form and content of the quarterly reports. In addition, Company's annual reviewed financial statements for the most-recently completed fiscal year shall be included. The annual report shall also include a list of Company's officers and members of its board of directors.

A. Financial Statements. Financial statements shall show Company's results of operations for City, including the specific revenues and expenses in connection with the operations provided for in this Agreement. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP). The financial statements shall be reviewed in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of Oregon as determined by the State of Oregon Board of Accountancy.

B. Customer Billing List. Summary customer billing list that identifies each customer account code (e.g., 1 cubic yard container with 1 pick-up per week) and the number of customers receiving such service.

1 **9.4 Adverse Information**

2 **9.4.1 Reporting Adverse Information.** Company shall provide City two copies
3 (one to the City Administrator, one to the City Attorney) of all reports,
4 pleadings, applications, notifications, notices of violation, or other formal actions
5 relating specifically to Company's performance of services pursuant to this
6 Agreement, submitted by Company to, or received by Company from, the
7 United States Environmental Protection Agency, the Oregon Department of
8 Environmental Quality, the Securities and Exchange Commission or any other
9 federal, state, or local agency, including any federal or state court actions
10 brought by any of the aforementioned agencies, with regard to Company's
11 operations in the State of Oregon. Copies shall be submitted to City
12 simultaneously with Company's filing or submission of such matters with said
13 agencies. Company's routine correspondence to said agencies need not be
14 routinely submitted to City, but shall be made available to City promptly upon
15 City's written request.

16 **9.4.2 Failure to Report.** The refusal or failure of Company to submit any
17 required reports or to provide required information to City shall result in
18 liquidated damages as described in Section 12.3.2.D, or the inclusion of any
19 materially false or misleading statement or representation by Company in such
20 report shall be deemed an event of default of the Agreement as described in
21 Section 12.1 and shall subject Company to all remedies which are available to
22 City under the Agreement or otherwise.

ARTICLE 10
INDEMNIFICATION, INSURANCE AND BOND

10.1 Indemnification

Company hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, and agents (collectively, indemnitees) from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Company, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement; (2) the failure of Company, its officers, employees, agents, contractors, and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the environmental laws), ordinances, and regulations, and/or applicable permits and licenses; (3) the acts of Company, its officers, employees, agents, contractors, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the environmental laws). The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death, or damage is also caused in part by any of the indemnitees' negligence, but shall not extend to matters resulting from the indemnitees' negligence, willful misconduct, or breach of this Agreement. Company further agrees to and shall, upon demand of City, at Company's sole cost and expense, defend (with attorneys acceptable to City) City, its elected and appointed boards and commissions, officers, employees, and agents against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events.

Company, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend City and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation

over the definitions of "solid waste" or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or state laws to provide solid waste, recyclable materials, or yard debris services in City. This provision shall survive the expiration of the period during which collection services are to be provided under this Agreement. City and Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event City and Company jointly agree to appeal, or to oppose any appeal, City and Company agree to share equally the costs of appeals. Should either City or Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the Party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

Company's duty to indemnify and defend from the aforementioned events arising during the term of the Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

10.2 Hazardous Substances Indemnification

Company shall indemnify, defend with counsel reasonably acceptable to City, protect and hold harmless City, its elected and appointed boards, commissions, officers, employees, and agents (collectively, indemnitees) from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, indemnitees arising from or attributable to the acts or omissions of Company, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit damages arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or

other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance, hazardous waste, and/or household hazardous waste (collectively, "waste") at any places where Company collects and transports, processes, stores, or disposes of City solid waste, recyclable materials, yard debris, and/or street debris, or other waste. The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e), to defend, protect, hold harmless, and indemnify City from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement.

10.3 Insurance

City does not, and shall not, waive any rights against Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by City or the deposit with City by Company of the insurance policies described in this provision. Company shall maintain insurance policies meeting the following specifications at all times during the term of this Agreement.

10.3.1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1) Comprehensive general liability or commercial general liability insurance.
- 2) Automobile liability insurance.
- 3) Workers' Compensation insurance as required by the State of Oregon and employer's liability insurance.

10.3.2 Minimum Limits of Insurance

Company shall maintain in force for the term of this Agreement limits no less than:

- 1) Comprehensive general liability: Five Million Dollars (\$5,000,000) aggregate, One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

- 2) Automobile liability: Five Million Dollars (\$5,000,000) aggregate, One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- 3) Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the State of Oregon and Employer's liability limits of One Million Dollars (\$1,000,000) per accident.
- 4) Environmental Impairment Liability: Five Million Dollars (\$5,000,000) combined single limit per occurrence for the release of pollution into the environment.

10.3.3 Deductibles and Self-Insured Retentions. If Company wants to increase the amounts of deductibles or self-insured retentions that were in effect on the effective date of this Agreement, the Company shall obtain the written consent of City. City's consent will not be unreasonably withheld.

10.3.4 Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

- 1) General Liability, Automobile Liability, and Environmental Impairment Liability Coverage
 - a) City, its elective and appointive boards, commissions, officials, employees, agents and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Company; products and completed operations of Company; premises owned, leased or used by Company; or vehicles owned, leased, hired or borrowed by Company. The coverage shall contain no special limitations on the scope of protection afforded to City, its elective and appointive boards, commissions, officials, employees, agents or volunteers.
 - b) Company's insurance coverage shall be primary insurance as respects City, its elective and appointive boards, commissions, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its

officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of Company's insurance and shall not contribute with it.

c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, elective and appointive boards, commissions, employees, agents or volunteers.

d) Coverage shall state that Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2) Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against City, its officials, elective and appointive boards, commissions, employees, agents and volunteers for losses arising from work performed by Company for City.

3) All Coverage - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 calendar days' prior written notice by certified mail, return receipt requested, has been given to City.

10.3.5 Acceptability of Insurers. The insurance policies required by this Article shall be issued by an insurance company or companies authorized to do business in the State of Oregon and with a rating in the most recent edition of Best's Insurance Reports of A+ or better.

10.3.6 Verification of Coverage. Simultaneously with the execution of this Agreement, Company shall furnish City with certificates of insurance and with original endorsements affecting coverage required hereunder, in form and substance satisfactory to City. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Such certificates and endorsements shall show the type and amount of coverage, effective date and dates of expiration of policies, and

shall have all required endorsements. City reserves the right to review copies of all required insurance policies, at City Hall, upon the reasonable request of City.

Renewal certificates will be furnished periodically to City to demonstrate maintenance of the required coverage throughout the term.

If Company fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Company's expense, such insurance as it may deem proper.

10.3.7 Contractors and Subcontractors. Company shall include all contractors and subcontractors providing collection services under this Agreement as insureds under its policies or shall furnish separate certificates and endorsements for each contractor and subcontractor. All coverage for contractors and subcontractors shall be subject to all of the requirements stated herein. All other subcontractors having face-to-face contact with the customers shall be required by Company to carry general liability insurance.

10.3.8 Required Endorsements

- 1) The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty calendar days prior written notice by certified mail, return receipt requested, shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Administrator
City of Canby
P.O. Box 930
Canby, OR 97013

- 2) The Public Liability policy shall contain endorsements in substantially the following form:

- a) "Thirty calendar days prior written notice by certified mail, return receipt requested, shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

MEMORANDUM OF UNDERSTANDING
EXHIBIT A

City Administrator
City of Canby
P.O. Box 930
Canby, OR 97013

- b) "City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."
- c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- d) "Inclusion of City as an additional insured shall not affect City's rights as respects any claim, demand, suit or judgment brought or recovered against Company. This policy shall protect Company and City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Company's liability as set forth in the policy beyond the amount shown or to which Company would have been liable if only one party had been named as an insured."

ARTICLE 11
CITY'S RIGHT TO PERFORM SERVICE

11.1 General

In the event that Company, for any reason whatsoever, fails, refuses, or is unable to collect or transport any or all solid waste, recyclable materials, or yard debris which it is required to by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than 48 hours, and if, as a result thereof, solid waste, recyclable materials, or yard debris should accumulate in City to such an extent, in such a manner, or for such a time that City should find that such accumulation endangers the public health, safety or welfare, then City shall have the right, but not the obligation, upon 24 hour prior written notice to Company during the period of such emergency as determined by City, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Company; and/or (2) to take temporary possession of any or all of Company's land, equipment, and other property used or useful in the collection and transportation of solid waste, recyclable materials, and yard debris and to use such property to collect and transport any solid waste, recyclable materials, and yard debris generated within City which Company would otherwise be obligated to collect and transport pursuant to this Agreement.

If solid waste, recyclable materials, or yard debris accumulates in City to such an extent, in such a manner or for such a time that City finds that such accumulation represents an immediate danger to the public health safety or welfare, City shall not be required to provide the 24 hour prior written notice set forth above in order to take the above actions.

Notice of Company's failure, refusal or neglect to collect and transport solid waste, recyclable materials, or yard debris may be given orally by City by telephone to Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent by City to Company within 24 hours of the oral notification.

Company further agrees that in such event:

A. It will take direction from City to effect the transfer of possession of equipment and property to City for City's use.

B. It will, if City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.

C. City may immediately engage all or any personnel necessary or useful for the collection and transportation of solid waste, recyclable materials, and yard debris, including, if City so desires, employees previously or then employed by Company, Company further agrees, if City so requests, to furnish City the services of any or all management or office personnel employed by Company whose services are necessary or useful for solid waste, recyclable materials, and yard debris collection, transportation, processing and disposal operations and for the billing and collection of fees for these services.

City agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 12.4, City shall pay to Company the reasonable rental value of the equipment and facilities, possession of which is taken by City, for the period of City's possession, if any, which extends beyond the period of time for which Company has rendered bills in advance of service, for the class of service involved.

Except as otherwise expressly provided in the previous paragraph, City's exercise of its rights under this Article: (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of City to Company; and (3) does not exempt Company from any of the indemnity or insurance provisions of this Agreement, which are meant to extend to circumstances arising under this Section, provided that Company is not required to indemnify City against claims and damages arising from the negligence or willful misconduct of City, its elective and appointive boards,

commissions, officers, employees and agents in the operation of collection vehicles during the time City has taken possession of such vehicles.

11.2 Temporary Possession of Company's Property

If City suffers an interruption or discontinuance of service (including interruptions and discontinuance due to events described in Section 12.4), City may take possession of and use all of Company's property described above until other suitable arrangements can be made for the provision of solid waste, recyclable materials, and yard debris services.

11.3 Billing and Compensation to City During City's Possession

During such time that City is providing solid waste, recyclable materials, and yard debris services, as above provided, Company shall bill and collect payment from all users of the above-mentioned services as described in Section 6.1. Company further agrees that, in such event, it shall reimburse City for any and all costs and expenses incurred by City beyond that billed and received by Company in taking over possession of the above-mentioned equipment and property for solid waste, recyclable materials, and yard debris service in such manner and to an extent as would otherwise be required of Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by City to Company of each statement listing such costs and expenses, but in no event later than five business days from and after each such submission.

11.4 City's Right to Relinquish Possession

It is further mutually agreed that City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to Company and thereupon demand that Company resume the solid waste, recyclable materials, and yard debris services as provided in this Agreement, whereupon Company shall be bound to resume the same.

11.5 Duration of City's Possession

City's right pursuant to this Article to retain temporary possession of Company's facilities and equipment, and to render collection services, shall terminate when the event which caused the taking possession under Section 11.1 is cured and the

MEMORANDUM OF UNDERSTANDING
EXHIBIT A

1 performance bond is fully restored. In any case, City has no obligation to
2 maintain possession of Company's property or equipment and/or continue its
3 use for any period of time and may at any time, in its sole discretion, relinquish
4 possession to Company.

ARTICLE 12
DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

12.1 Events of Default

All provisions of the franchise and this Agreement to be performed by Company are considered material. Each of the following shall constitute an event of default.

A. Fraud or Deceit. If Company practices any fraud or deceit upon City.

B. Insolvency or Bankruptcy. If Company becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Company in a bankruptcy proceeding.

C. Failure to Maintain Coverage. If Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement unless such insurance becomes unavailable.

D. Violations of Regulation. If Company violates any orders or filings of any regulatory body having jurisdiction over Company, which orders or filings have a material impact on Company's ability to perform this Agreement, provided that Company may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the franchise and this Agreement shall be deemed to have occurred.

E. Failure to Perform. If Company ceases to provide collection services as required under this Agreement for a period of two consecutive days or more, for any reason within the control of Company, including labor disputes. If City performs service under Article 11, the Company's failure to perform shall not be considered a default.

F. Failure to Pay. If Company fails to make any payments required under this Agreement and/or refuses to provide City with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Acts or Omissions. Any other act or omission by Company which violates the terms, conditions, or requirements of this Agreement, ORS 459 and

1 ORS 459A, as it may be amended from time to time, or any law, statute,
2 ordinance, order, directive, rule, or regulation issued there under and which is
3 not corrected or remedied within the time set in the written notice of the
4 violation or, if Company cannot reasonably correct or remedy the breach within
5 the time set forth in such notice, if Company should fail to commence to correct
6 or remedy such violation within the time set forth in such notice and diligently
7 effect such correction or remedy thereafter.

8 **H. False or Misleading Statements.** Any material representation or
9 disclosure made to City by Company in connection with or as an inducement to
10 entering into this Agreement, or any future amendment to this Agreement,
11 which proves to be false or misleading in any material respect as of the time such
12 representation or disclosure is made, whether or not any such representation or
13 disclosure appears as part of this Agreement.

14 **I. Attachment.** There is a seizure of, attachment of, or levy on, the operating
15 equipment of Company, including without limits its equipment, maintenance or
16 office facilities, and any part thereof for a period of more than 60 calendar days.

17 Company shall be given 48 hours from notification by City to cure any default
18 arising under Sections 12.1.C, 12.1.E, 12.1.F, 12.1.I, and 12.1.J provided, however,
19 that City shall not be obligated to provide Company with a notice and cure
20 opportunity if the Company has committed the same or similar breach within a
21 24-month period.

22 **12.2 Right to Terminate Upon Default**

23 In the event that Company should default and subject to the right of the
24 Company to cure, in the performance of any provisions of this contract, and the
25 default is not cured within 48 hours from notification of default from City for any
26 default arising under Sections 12.1.C., 12.1.E, 12.1.F, 12.1.I, or 12.1.J, or 10
27 calendar days' notice if the public health or safety is threatened, or otherwise 30
28 calendar days after receipt of written notice of default from City, then City may,
29 at its option, hold a hearing at its next practically available City Council meeting
30 to determine whether this contract should be terminated. In the event City
31 decides to terminate this contract, City shall serve 30 calendar days' written
32 notice of its intention to terminate upon Company. In the event City exercises its
33 right to terminate this contract, City may, at its option, either directly undertake

performance of the services or arrange with other persons to perform the services with or without a written agreement. This right of termination is in addition to any other rights of City upon a failure of Company to perform its obligations under this Agreement.

City's right to terminate this Agreement and to take possession of Company's facility(ies) are not exclusive, and City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that City may have.

By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality service, the time required to effect alternative service, and the rights granted by City to Company, the remedy of damages for a breach hereof by Company may be inadequate and City may seek injunctive relief.

12.3 Liquidated Damages

12.3.1 General

City finds, and Company agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Company of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that Franchise services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

12.3.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards

The Parties further acknowledge that consistent, reliable solid waste, recyclable materials, and yard debris collection service is of utmost importance to City and that City has considered and relied on Company's representations as to its quality of service commitment in awarding the franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if company fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Article, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the effective date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Company _____	City _____
Initial Here _____	Initial Here _____

Company agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

A. Collection Reliability

- 1) For each failure to commence service to a new customer account within seven calendar days after ordered by customer which exceeds 12 such occurrences annually: \$150.00

MEMORANDUM OF UNDERSTANDING
EXHIBIT A

- 2) For each failure to collect solid waste, recyclable materials, or yard debris which has been properly set out for collection, from an established customer account on the scheduled collection day and not collected within 24 hours which exceeds 12 such occurrences annually: \$150.00
- 3) For each failure to collect solid waste, recyclable materials, or yard debris which has been properly set out for collection, from the same customer on two consecutive scheduled pickup days which exceeds 12 such occurrences annually: \$150.00

B. Collection Quality

- 1) For each occurrence of damage to private property which exceeds 12 such occurrences annually: \$250.00
- 2) For each occurrence of failure to properly return empty receptacles to avoid pedestrian or vehicular traffic impediments which exceeds 12 such occurrences annually: \$150.00
- 3) For each occurrence of excessive noise or discourteous behavior which exceeds 12 such occurrences annually: \$250.00
- 4) For each failure to clean up solid waste, recyclable materials, or yard debris spilled from receptacles which exceeds 12 such failures annually: \$150.00
- 5) For each occurrence of collecting solid waste, recyclable materials, or yard debris during unauthorized hours which exceeds 12 such occurrences annually: \$250.00

C. Customer Responsiveness

- 1) For each failure to initially respond to a customer complaint within one business day which exceeds 12 such failures annually: \$100.00
- 2) For each failure to process customer complaints to City as required by Section 6.2 which exceeds 12 such failures annually: \$100.00

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D. Timeliness of Submissions to City

Any report shall be considered late until such time as City receives a correct and complete report. For each calendar day a report is late, the daily liquidated damage amount shall be:

- | | | |
|----|--------------------|---------------|
| 1) | Quarterly Reports: | \$100 per day |
| 2) | Annual Reports: | \$100 per day |

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Where the reference to "annually" appears in the charts above, it shall refer to occurrences within each "calendar year", commencing January 1 and ending December 31.

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12.3.3 Process

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Liquidated damages will only be assessed after Company has been given the opportunity but failed to rectify the damages as described in this Agreement.

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City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of customer complaints.

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Prior to assessing liquidated damages, City shall give Company notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Company may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/non-performance. Company may, within 10 calendar days after receiving the notice, request a meeting with City. Company may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. City will provide Company with a written explanation of its determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

12.3.4 Amount

City may assess liquidated damages for each calendar day or event, as appropriate, that Company is determined to be liable in accordance with this Agreement.

12.3.5 Timing of Payment

Company shall pay any liquidated damages assessed by City within 10 days after they are assessed unless Company requests a meeting with City in accordance with Section 12.3.3. If they are not paid within the 10-day period, City may order the termination of the franchise granted by this Agreement.

12.4 Excuses from Performance

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of terrorism, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder. Labor unrest, including, but not limited to, strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Company's employees or directed at Company is not an excuse from performance and Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

The Party claiming excuse(s) from performance shall, within two calendar days after such Party has notice of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to excuse under this section.

The interruption or discontinuance of Company's services caused by one or more of the events excused shall not constitute a default by Company under this Agreement. Notwithstanding the foregoing, however, if Company is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of seven calendar days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving 10 days' notice, in which case the provisions relative to taking possession of Company's

land, equipment and other property and engaging Company's personnel in Article 11 and this Article will apply.

12.5 Notice, Hearing and Appeal of City Breach

Should Company contend that City is in breach of this Agreement, it shall file with the City Administrator a written request for an administrative hearing. Said request shall be made within 90 calendar days of the event or incident that allegedly gave rise to the breach. City shall notify Company of the time and date said hearing shall be held within 30 calendar days of receipt of Company's request. Company shall present its position and all relevant facts after City staff has made its presentation. Company shall be notified of City Administrator's ruling in writing within 14 calendar days of the administrative hearing.

If Company is not in agreement with the ruling issued by the City Administrator following the administrative hearing, it shall have the right to appeal the ruling to the City Council or in its discretion, to a three person appeal/review board, one member appointed by the City Council, another member appointed by Company, and the third member selected by the other two appointees. This appeal shall be made in writing to City Council no later than 14 calendar days after receipt of the administrative hearing ruling. City shall notify Company of the time and date the Council or Board will review Company's allegation. Company shall present its position and all relevant facts after staff has made its presentation. Company shall be notified in writing within 30 calendar days of the Council or Board's ruling. The Council or Board's ruling shall be final, and Company shall have no further rights of appeal.

Company shall have no cause of action for damages against City in relation to any such dispute or claim.

ARTICLE 13
OTHER AGREEMENTS OF THE PARTIES

13.1 Relationship of Parties

The parties intend that Company shall perform the services required by this Agreement as an independent Company engaged by City and not as an officer or employee of City or as a partner of or joint venture with City. No employee or agent of Company shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Company shall have the exclusive control over the manner and means of conducting the solid waste, recyclable materials, and yard debris collection services performed under this Agreement, and all persons performing such services. Company shall be solely responsible for the acts and omissions of its officers, employees, contractors, subcontractors and agents. Neither Company nor its officers, employees, contractors, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

13.2 Compliance with Law

In providing the services required under this Agreement, Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of Oregon, and local agencies. City shall comply with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the term.

13.3 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Oregon.

1 **13.4 Jurisdiction**

2 Any lawsuits between the parties arising out of this Agreement shall be brought
3 and concluded in the courts of the State of Oregon, which shall have exclusive
4 jurisdiction over such lawsuits.

5 With respect to venue, the parties agree that this Agreement is made in and will
6 be performed in Clackamas County.

7 **13.5 Assignment**

8 **13.5.1 Company's Assignment**
9

10 A. **Permitted Assignments.** Company shall have the right to assign the entirety
11 of this Agreement to any other company which is owned and controlled by
12 Company provided that: (i) such company is qualified to do business and has
13 a place of business in Oregon, has a net worth at least equal to that of
14 Company at the time of the assignment, and assumes in writing all of
15 Company's obligations under this Agreement prior to or concurrently with
16 such assignment. Assignee Company shall also provide a performance bond
17 in the amount of Five Hundred Thousand dollars (\$500,000.00). The
18 performance bond shall be in a form acceptable to the City and shall serve as
19 security for the faithful performance of all the provisions and obligations of
20 this Agreement.
21

22 Company shall not otherwise assign its rights nor delegate or otherwise
23 transfer its obligations under this Agreement to any other person without the
24 prior written consent of the City. Any such assignment made without the
25 consent of the City shall be void and the attempted assignment shall
26 constitute a breach of this Agreement.

27 B. **Assignment Defined.** For the purpose of this Section, "assign" or
28 "assignment" shall include, but not be limited to: (i) a sale, exchange or
29 other transfer to either a related or a third party of substantially all of
30 Company's (or its parent Company's) assets dedicated to service under
31 this Agreement; (ii) the issuance of new stock to or the sale, exchange, or
32 other transfer of 10% or more of the then outstanding common stock of
33 Company (or its parent Company) to a person other than the shareholder
34 or an affiliate of shareholder owning said stock at the effective date.
35 "Parent Company" refers to a company owning more than 50% of the

shares of another company (subsidiary) or a company that has management control over such subsidiary.

C. **Consent Requirements.** Except as provided in Section 13.5.1A above, this Agreement and the duties and obligations of Company hereunder may not be assigned. Provided, however, nothing herein is intended to prevent Company from requesting that the City consider waiving this restriction and consenting to an assignment. In connection with any such request, Company anticipates that it will undertake or furnish the following:

1. Company shall undertake to pay the City the reasonable expenses for attorneys' and consultants' fees and costs necessary to investigate the suitability of any proposed assignee, and reasonable expenses incurred in reviewing and finalizing any documentation required for approving any such assignment proffered;
2. Company shall furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;
3. Company shall furnish the City with satisfactory proof that: (i) the proposed assignee has directly related solid waste management collection experience; (ii) in the last five (5) years, the proposed assignee has not suffered any material citations or other material censure from any federal, state, or local agency having jurisdiction over its collection, processing, transfer station or landfill operations due to any significant failure to comply with federal, state or local waste management laws and that the assignee has provided the City with a complete list of any citations and censures (whether material or not); (iii) the proposed assignee has at all times conducted its collection, processing, transfer station, and landfill operations in an environmentally safe and conscientious fashion; (iv) the proposed assignee conducts its solid waste collection, processing, transfer station, and landfill management practices in material compliance with all federal, state, and local laws regulating the collection, processing, transfer and disposal of solid

waste; (v) that the guaranty agreement provided by the proposed assignee is satisfactory to the City and is binding and enforceable upon the guarantor; and, (vi) any other information reasonably required by the City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe, and effective manner.

13.5.2 City's Assignment

City may assign and delegate all rights and duties of City, and its Council, Boards, and Officials, its rights under this Agreement to any joint powers authority or other public agency; provided, however, that this Agreement will continue to govern only the collection and transportation of solid waste, recyclable materials, and yard debris generated within City.

13.6 Contracting or Subcontracting

Company shall not engage any contractors or subcontractors for collection, transporting, processing, or disposing of solid waste, recyclable materials, and yard debris without the prior written consent of City. Provided, however, permission is granted to assign the collecting, transporting and disposing of medical waste to Bio-Med of Oregon.

13.7 Binding on Assigns

The provisions of this Agreement shall inure to the benefit to and be binding on the permitted assigns of the parties.

13.8 Transition to Next Company

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, Company will cooperate with City and subsequent company(ies) to assist in an orderly transition which will include Company providing route lists and billing information.

13.9 Parties in Interest

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any persons other than the parties to it and their representatives, successors and permitted assigns.

13.10 Condemnation

City fully reserves the rights to acquire Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 11.

13.11 Notice

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the Parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to City:

City Administrator
City of Canby
P.O. Box 930
Canby, OR 97013

If to Company:

General Manager
Canby Disposal
P.O. Box 550
Canby, OR 97013

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this Section.

Notice shall be deemed given on the day it is personally delivered or, if mailed, three business days from the date it is deposited in the mail.

13.12 Representatives of the Parties

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Administrator, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate

1 employees. Company may rely upon actions taken by such delegates if they are
2 within the scope of the authority properly delegated to them.

3 Company shall, by the effective date, designate in writing a responsible officer
4 who shall serve as the representative of Company in all matters related to the
5 Agreement and shall inform City in writing of such designation and of any
6 limitations upon his or her authority to bind Company. City may rely upon
7 action taken by such designated representative as actions of Company unless
8 they are outside the scope of the authority delegated to him/her by Company as
9 communicated to City.

10 **13.13 City Free to Negotiate with Third Parties**

11 During the Term of this Agreement, City may investigate all options for the
12 collection, transportation, processing, and disposal of solid waste, recyclable
13 materials, and yard debris after the expiration of the term. Without limiting the
14 generality of the foregoing, City may solicit proposals from Company and from
15 third parties for the provision of collection services, and may negotiate and
16 execute agreements for such services that will take effect upon the expiration or
17 earlier termination under Article 12.

18 **13.14 Compliance with Municipal Code**

19 Company shall comply with those provisions of the municipal code of City
20 which are applicable, and with any and all amendments to such applicable
21 provisions during the term of this Agreement.

22 **13.15 Privacy**

23 Company shall strictly observe and protect the rights of privacy of customers.
24 Information identifying individual customers or the composition or contents of a
25 customer's waste stream shall not be revealed to any person, governmental unit,
26 private agency, or company, unless upon the authority of a court of law, by
27 statute, or upon valid authorization of the customer. This provision shall not be
28 construed to preclude Company from preparing, participating in, or assisting in
29 the preparation of waste composition studies or waste stream analyses which
30 may be required by ORS 459A.035.

1 **13.16 Attorney Fees and Cost Recovery**

2 The prevailing party in any action, including any appeals there from, brought to
3 enforce the terms of this Agreement or arising out of this Agreement may
4 recover its reasonable costs and attorneys' fees expended in connection with such
5 an action/appeal from the other party.

ARTICLE 14
MISCELLANEOUS AGREEMENTS

14.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.

14.2 Article and Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

14.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties.

14.4 Interpretation

This Agreement, including the Exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

14.5 Agreement

This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

14.6 Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

1 **14.7 Exhibits**

2 Each of the Exhibits identified as Exhibits 1 through 3 is attached hereto and
3 incorporated herein and made a part hereof by this reference. In the case of
4 conflict between the Exhibits and the Agreement, the Agreement shall govern.

5 **14.8 Waiver**

6 The waiver by either Party of any breach or violation of any provisions of this
7 Agreement shall not be deemed to be a waiver of any breach or violation of any
8 other provision nor of any subsequent breach or violation of the same or any
9 other provision. The subsequent acceptance by either party of any moneys that
10 become due hereunder shall not be deemed to be a waiver of any pre-existing or
11 concurrent breach or violation by the other party of any provision of this
12 Agreement.

13 Failure of either party to exercise any of the remedies set forth herein within the
14 time periods provided for shall not constitute a waiver of any rights of that party
15 with regard to that failure to perform or subsequent failures to perform, whether
16 determined to be a breach, excused performance or unexcused defaults by the
17 other party.

18

MEMORANDUM OF UNDERSTANDING
EXHIBIT A

1 IN WITNESS WHEREOF, City and Company have executed this Agreement as of the
2 day and year first above written.

3
4 COMPANY CITY OF CANBY, OREGON

5 A Municipal Corporation

6 By Fred A Kahut By Melody Thompson

7 Name: Fred A. Kahut Name: MELODY THOMPSON

8 Title: president Title: MAYOR

9
10 APPROVED AS TO FORM:

11
12 John H. Kelley
13 John H. Kelley
14 City Attorney

15
16 ATTEST:

17
18 Kimberly Scheaffer
19 Kimberly Scheaffer, CMC
20 City Recorder
21

EXHIBIT 1
CITY FACILITIES

MEMORANDUM OF UNDERSTANDING
EXHIBIT A

Exhibit 1

City Facilities

Company shall provide solid waste and Recyclable materials collection services to the City's public facilities, parks, public litter cans, and public recycling cans as listed below. The City may, at any time, modify the service requirements to increase the volume collected or the frequency of collection.

Service Locations	Solid Waste/Recycling	
	No. of Receptacles and Sizes	Frequency of Collection
Arneson Garden	(6) 4-yd	Clean up
Canby Adult Center (Transit Stop)	(3) City Cans	
Canby Area Transit Center	65 gallon	Weekly
Canby City Hall	3-yd	Twice Weekly
Canby City Hall	65 gallon	Weekly
Canby Fire Department	1.5-yd	Twice Weekly
Canby Fire Department	65 gallon/yard debris	Weekly
Canby Public Library	95 gallon	Weekly
Canby Swim Center	4-yd	Weekly
City Cans Around Town	(34)	Three Times a Week
City Shops	3-yd	Weekly
City Shops	4-yd	Weekly
City Shops - Public Works	2-yd	Weekly
Community Park (Berg Parkway)	(2) 4-yd	Three Times a Week
Eco Park	65 gallon	Weekly
Legacy Park	(2) 65 gallon	Weekly
Maple Street Park	(2) 4-yd	Twice Weekly
Skate Park	1.5-yd	Weekly
Slice of Summer	(4) 4-yd	Clean up
Wastewater Treatment Plant	(2) 2-yd	Twice Weekly
Zion Cemetery	3-yd	Weekly

EXHIBIT 2
RATES FOR RATE PERIOD
JULY 1, 2010 THROUGH JUNE 30, 2011

**MEMORANDUM OF UNDERSTANDING
EXHIBIT A**

EXHIBIT 2

Canby Disposal Company
City Rates (includes weekly yard debris collection)
Proposed effective date July 1, 2010

Residential Service:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
20-gallon cart weekly curbside	\$ 17.94	\$ 0.36	\$ 18.30	2%
20-gallon cart weekly w/in 50' of road	\$ 20.94	\$ 0.42	\$ 21.36	2%
32-gallon cart weekly curbside	\$ 21.36	\$ 0.43	\$ 21.79	2%
32-gallon cart weekly w/in 50' of road	\$ 24.36	\$ 0.49	\$ 24.85	2%
32-gallon cart monthly curbside	\$ 10.68	\$ 0.21	\$ 10.89	2%
32-gallon cart monthly w/in 50' of road	\$ 12.18	\$ 0.24	\$ 12.42	2%
65-gallon cart weekly curbside	\$ 34.20	\$ 0.68	\$ 34.88	2%
65-gallon cart weekly w/in 50' of road	\$ 37.20	\$ 0.74	\$ 37.94	2%
95-gallon cart weekly curbside	\$ 37.91	\$ 0.76	\$ 38.67	2%
95-gallon cart weekly w/in 50' of road	\$ 40.91	\$ 0.82	\$ 41.73	2%

Commercial Service:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
32-gallon cart weekly curbside	\$ 20.00	\$ 0.40	\$ 20.40	2%
32-gallon cart weekly w/in 50' of road	\$ 20.00	\$ 0.40	\$ 20.40	2%
65-gallon cart weekly curbside	\$ 30.00	\$ 0.60	\$ 30.60	2%
65-gallon cart weekly w/in 50' of road	\$ 30.00	\$ 0.60	\$ 30.60	2%
95-gallon cart weekly curbside	\$ 33.00	\$ 0.66	\$ 33.66	2%
95-gallon cart weekly w/in 50' of road	\$ 33.00	\$ 0.66	\$ 33.66	2%

Extra Hauling:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
32-gallon cart worth	\$ 5.00	\$ 0.10	\$ 5.10	2%
2nd 32-gallon worth on same day	\$ 7.50	\$ 0.15	\$ 7.65	2%
3rd 32-gallon worth on same day	\$ 8.00	\$ 0.16	\$ 8.16	2%

MEMORANDUM OF UNDERSTANDING
EXHIBIT A

Mobile Home Courts and Apartments

(Four or more units , where owner accepts and pays billing)

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
32-gallon cart weekly curbside	\$ 16.36	\$ 0.33	\$ 16.69	2%
32-gallon cart weekly w/in 50' of road	\$ 19.36	\$ 0.39	\$ 19.75	2%

**Note: If billed separately, regular residential rates apply.*

Extra Charge for Stairs:

<u>Service Type</u>	
One flight of stairs	25% add'l
Two flights of stairs	50% add'l

Hourly Hauling Rates:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
Truck and one employee (hourly)	\$ 60.71	\$ 1.21	\$ 61.92	2%
Truck and two employees (hourly)	\$ 82.01	\$ 1.64	\$ 83.65	2%

**Note: Does not include disposal charges*

Major Appliances

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
Small	\$ 4.17	\$ 0.08	\$ 4.25	2%
Large	\$ 35.00	\$ 0.70	\$ 35.70	2%

Tires:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
Up to size 750 x 16	\$ 2.03	\$ 0.04	\$ 2.07	2%
Larger	\$ 3.18	\$ 0.06	\$ 3.24	2%
Up to extra large size	\$ 35.00	\$ 0.70	\$ 35.70	2%

**Note: Does not include disposal charges*

Container Service - Loose:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
1.5-yard picked up 1x/week	\$ 121.85	\$ 2.44	\$ 124.29	2%
2-yard picked up 1x/week	\$ 162.40	\$ 3.25	\$ 165.65	2%
3-yard picked up 1x/week	\$ 219.50	\$ 4.39	\$ 223.89	2%
4-yard picked up 1x/week	\$ 279.42	\$ 5.59	\$ 285.01	2%
6-yard picked up 1x/week	\$ 392.06	\$ 7.84	\$ 399.90	2%
Additional 1.5-yard picked up 1x/week	\$ 112.85	\$ 2.26	\$ 115.11	2%
Additional 2-yard picked up 1x/week	\$ 153.00	\$ 3.06	\$ 156.06	2%
Additional 3-yard picked up 1x/week	\$ 210.50	\$ 4.21	\$ 214.71	2%
Additional 4-yard picked up 1x/week	\$ 270.42	\$ 5.41	\$ 275.83	2%
Additional 6-yard picked up 1x/week	\$ 383.00	\$ 7.66	\$ 390.66	2%

**Note: Compacted container rates shall be 2.5 times the loose rate*

**MEMORANDUM OF UNDERSTANDING
EXHIBIT A**

Cleanup Containers:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
3-yard container	\$ 66.88	\$ 1.34	\$ 68.22	2%
4-yard container	\$ 85.58	\$ 1.71	\$ 87.29	2%

**Note: Price is per dump*

Drop Box Services - Loose:

Permanent Accounts

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
10-yard haul fee	\$ 80.55	\$ 1.61	\$ 82.16	2%
20-yard haul fee	\$ 80.55	\$ 1.61	\$ 82.16	2%
30-yard haul fee	\$ 105.00	\$ 2.10	\$ 107.10	2%
40-yard haul fee	\$ 115.00	\$ 2.30	\$ 117.30	2%

Occasional Accounts

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
10-yard haul fee	\$ 106.59	\$ 2.13	\$ 108.72	2%
20-yard haul fee	\$ 106.59	\$ 2.13	\$ 108.72	2%
30-yard haul fee	\$ 131.94	\$ 2.64	\$ 134.58	2%
40-yard haul fee	\$ 143.38	\$ 2.87	\$ 146.25	2%

**Note: Price is for haul fee only; disposal and franchise fees are extra*

Drop Box Services - Compacted:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
Under 20 yards (rate per haul)	\$ 91.95	\$ 1.84	\$ 93.79	2%
20-29 yards (rate per yard)	\$ 5.65	\$ 0.11	\$ 5.76	2%
30-39 yards (rate per yard)	\$ 5.05	\$ 0.10	\$ 5.15	2%
40 yards or more (rate per yard)	\$ 4.45	\$ 0.09	\$ 4.54	2%

**Note: Price is for haul fee only; disposal and franchise fees are extra*

Demurrage Charge:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
Occasional accounts (per day after 48 hrs)	\$ 6.19	\$ 0.12	\$ 6.31	2%
Permanent accounts (per month)	\$ 61.98	\$ 1.24	\$ 63.22	2%

Mileage Fee:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
Charge per mile over 18 miles roundtrip from where the truck is stationed	\$ 2.30	\$ 0.05	\$ 2.35	2%

Transaction Fee:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
Transaction fee per drop box haul	\$ 3.00	\$ 0.06	\$ 3.06	2%

EXHIBIT 3
NOTARY CERTIFICATION

Exhibit 3

Notary Certification

STATE OF OREGON

COUNTY OF CLACKAMAS

On 06.17.10 (insert date), before me, Lisa Potter, Notary Public
(insert name and title of officer (e.g., "Jane Doe, Notary Public")), the
undersigned, a Notary Public in and for the State of Oregon, personally
appeared Fred A. Kahut, CANBY DISPOSAL CO.

_____ (insert name(s) of signer(s)), known to me to
be the president (insert title of signer(s)) of
Company that executed the within instrument on behalf of the Company therein
named, and acknowledged to me that such Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
seal in the County of Clackamas this 17th day of June, 2010.



Lisa Potter
Notary Public
My Commission Expires: 3/4/2012

MEMORANDUM OF UNDERSTANDING
EXHIBIT B



MEMORANDUM OF UNDERSTANDING
EXHIBIT B



MEMORANDUM OF UNDERSTANDING
EXHIBIT B



MEMORANDUM OF UNDERSTANDING
EXHIBIT B











From: [Barry Johnson](#)
To: [Randy Ealy](#); [Jerry Nelzen](#); [Maya Benham](#); [Teresa Ridgley](#)
Subject: Dr. Permans's request
Date: Thursday, August 28, 2025 12:08:01 PM

To the City Administrator and Council, at our recent Parks and Recreation Advisory Board meeting on Tuesday, August 19th, 2025, the topic was brought up again about the purchase of the road at SE 3rd Court or a lot on said road as presented by Dr. Perman in the past. Our Board was asked to weigh in on this topic during our meeting on the 19th.

Following discussion a motion was made and seconded by Board members "that the Parks Board recommend to the City Council that we do not use parks funds to purchase the road or a lot at SE 3rd Court." A vote of Board members followed with 4 yes votes and 1 abstention. The abstention wants no city funds, park or otherwise to be used to purchase the road or a lot. (See Parks Advisory Board meeting minutes dated August 19, 2025 @ 6:30PM.)

Barry Johnson
Chairman Canby Parks Advisory Board